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# THE PENSION COMMISSION OF ONTARIO

# BULLETIN

Winter - Spring 1996

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The PCO Bulletin is published by the Pension Commission of Ontario, which is located at:

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The *Pension Benefits Act*, R.S.O. 1990, c.P8, Regulation 909 (as amended), the terms of the pension plan and the policy and practices of the PCO should be considered in determining specific legislative and other legal requirements and professional advice should be sought.

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## PCO Affected By Government Constraints

In a statement last July, the Minister of Finance announced a series of initiatives designed to reduce the size of the government's budgetary deficit. Like most public institutions, the PCO was required to curb its spending for the balance of the current fiscal year and into the future. The constraint amounted to about 10 percent of the Commission's annual budget of just over \$6 million.

One of the consequences of this decision is that the PCO can no longer distribute the *PCO Bulletin* free of charge, which it has done since its launch in February, 1990. As is reported in the following article, arrangements are underway to offset expenses relating to the *PCO Bulletin*, *PCO Policies, Procedures and Decisions Manuals* and a planned PCO web site on the Internet. The recent acquisition of CRS Online, the operator of the BBS, by an Internet access provider means that our plan to make the transition to the Internet later in 1996 has been accelerated. The launch is expected in late spring or early summer. Details will be available at a later date.

In addition to instituting further belt tightening measures last fall, a reduction in staff was necessary to achieve the expenditure target. Along with other organizational changes necessitated by this reduction, the Actuarial Services Branch has been merged with the Pension Plans Branch and the combined operation is now under the directorship of Nurez Jiwani.

By relying more heavily on new technology, we hope that the PCO can continue to fulfil its mandate to the pension community in spite of these cut-backs. Every effort has been made to minimize the effect of the reduction and to ensure that satisfactory levels of service can be maintained.

— D. Ross Peebles, Superintendent of Pensions

### PCO Adopts New Approach to Communications

The shift to cost recovery for PCO communications is necessary and appropriate at this time. Although pension reform prompted the need for a strong communications link to pension plan administrators, their agents and other professionals, the practice of continuing to fund PCO communications from general tax revenues is no longer feasible. Despite this,

we remain committed to delivering the information stakeholders need to comply with the legislation in a convenient and cost-effective manner.

The PCO will make details known concerning the *PCO Bulletin*, *PCO Manuals* and the PCO's web site on the Internet as soon as possible. In the meantime, here are the highlights of our communications plan for 1996 and beyond:

#### A The PCO Bulletin

The *PCO Bulletin* will resume publication on a quarterly basis in 1996. This will be on a subscription basis only. The *PCO Bulletin* will remain the cornerstone of the PCO's communications structure.

#### B The PCO Web Site on the Internet

The operator of the BBS, CRS Online, announced in late January that it had been acquired by a leading Internet access provider. As a result, CRS Online will not operate the BBS after March 31, 1996. Until then, it's business as usual on PCO Conference #149. (CRS Online has offered subscribers several options for consideration which will not be discussed here.)

As a result, plans are underway to launch a web site in late spring, 1996. The electronic medium is ideally suited to dissemination of timely information. Although selected information will be available at no charge, the main database of all PCO published information will be available only to those who register and subscribe to it. In addition to the information database, we plan to provide a calendar of Commission and other meeting dates and agenda information where appropriate. Key words from the decisions will also be referenced to facilitate searches.

PCO staff have entered into discussions with the Queen's Printer and hope to make the office consolidation of the *PBA* and Regulation 909 available on-line. Historically, amendments to the Regulation have been posted to the BBS and this practice will continue on the Internet.

It has not yet been decided if the PCO will operate its own web site or use that of the Government of Ontario, Ministry of Finance. In any case, we will publish our Internet address as soon as it is operational. Instructions for registration will be available at the site.



## Plan for Transition - April 1 to Web Launch Date

BBS subscribers have already been notified in the February 8, 1996 announcement that during the period between April 1, 1996 and the operation of our web site, there may be an interruption of this service.

The PCO plans to make alternate arrangements for the electronic dissemination of regulatory developments. When these arrangements are finalized, the PCO will inform key stakeholders about them through its fax notification service. If the material is excessive for fax transmission, arrangements will be made for pick up from PCO reception.

### C PCO Policies, Procedures and Decisions Manuals ("PCO Manuals")

In late spring, pension stakeholders will be invited to order a hard copy version of the *PCO Manuals*, a three volume set. Updated and reformatted information ensures accuracy, completeness and a more attractive and efficient presentation. Updates for PCO Manuals will be available from the PCO web site on the Internet. These manuals are now used by PCO staff.

### D Integrated Communications Support Stakeholders

Since 1990, PCO has developed a package of communications services to support the pension industry. These services are linked as the following summary shows:

- Following publication, the content of the *PCO Bulletin* is indexed by subject, reformatted and uploaded to the Internet and provided in *PCO Manuals*.
- The content on the Internet can be downloaded into the users' system and searched or repackaged as desired by users (in this arrangement, the user becomes a licensee and strict copyright rules apply).
- *PCO Manuals* will be current to the date of order. Updates for *PCO Manuals* will be available from the Internet.

By packaging and integrating PCO communications the same information is provided to stakeholders, PCO staff and Commissioners. We hope that this will assist stakeholders and improve regulatory compliance.

Individual products or services will be priced separately. Discounts will be available for multiple copies of the PCO Bulletin delivered to the same address. The PCO will inform its stakeholders of the final arrangements regarding new services in a promotional flyer to be distributed in late spring or early summer.

## Announcements

### **Chair Announces Her Resignation**

Professor Eileen Gillese recently announced her decision to resign from the Pension Commission of Ontario on May 17, 1996. This decision was necessitated by her acceptance of the position as Dean of the Faculty of Law at the University of Western Ontario.

Professor Gillese was appointed Acting Chair of the Pension Commission of Ontario on January 1, 1994. Her appointment as Chair was made by Order-in-Council dated March 24, 1994. Professor Gillese was first appointed to the Commission on January 1, 1988. She served as Vice Chair from May 25, 1989 to December 31, 1993.

Professor Gillese has taught law for many years and until recently was Associate Dean - Administration in the Faculty of Law at the University of Western Ontario. Her fields of specialization include pension law, administrative law and trusts. In addition to teaching, Professor Gillese has practised law on a full-time basis, both in Alberta and Ontario. She was awarded a Bachelor's degree in Commerce and Business Administration from the University of Alberta in 1977 and she holds undergraduate and graduate degrees from Oxford University.

Professor Gillese is a member of the editorial board of the *Estates and Trusts Journal* and the *Dominion Law Reports*. She has published widely in the areas of pension and trust law and is author of *Property Law*, 2nd edition, and co-author of *Commentary and Cases on Trusts*, 4th edition.

*PCO staff wish to express sincere appreciation to Professor Gillese for the leadership, dedication and support she has provided during her tenure as Chair.*



## **PCO Annual Report for Fiscal Year Ending March 31, 1995**

In late January, the Chair transmitted the *PCO Annual Report* to the Minister of Finance in compliance with the requirements of section 102 of the PBA. The report was subsequently filed with the Office of the Clerk of the Legislative Assembly on February 15 for tabling in the Legislature.

Because of budget constraints, only a limited number of copies of the English and French versions of the Report are available. Those wishing to obtain copies can pick them up from PCO reception. We will also fill faxed requests. Please direct such requests to Judith Chalmers at (416) 314-0650 and provide mailing details.

### **Commissioner Appointment**

Ms. Elizabeth Greville has been appointed as a member of the Pension Commission of Ontario effective February 8, 1996 for a three year term. Ms. Greville was called to the Ontario Bar in 1977 and earned her law degree from Osgoode Hall Law School in 1975. Ms. Greville obtained her B.A. (Hons.) in Political Science and Economics from the University of British Columbia in 1972.

Currently, Ms. Greville is a solicitor with the Law Division at Ontario Hydro. As Section Head for Pension and Corporate Securities, she has responsibility for strategic and legal matters relating to Hydro's Pension and Insurance Fund and legal matters relating to Hydro's corporate financing programs.

### **August 1995 Office Consolidation Contains Errors and Omissions**

The PCO is working with the Queen's Printer to correct errors in the August 1995 office consolidation. These include publication of the out-of-date versions of Form 1 (Application for Registration of a Pension Plan), Form 1.1 (Application for Registration of a Plan Amendment), Form 2 (the PBA prescribed portion of the joint Annual Information Return) and the omission of the Pension Benefits Guarantee Fund Assessment Certificate which was prescribed by O. Reg. 73/95.

Certain items published in the January 1995 office consolidation were omitted from the August 1995 version. These include: section 19 of the *PBA, 1987* which is unconsolidated and unrepealed; an index to Regulation 909; section 7a of O.Reg. 708/87 as made by O. Reg. 100/88 and amended by O.Reg. 422/88, 737/88, 651/89 and 650/90; and O. Reg. 713/92 made under the *Interpretation Act*.

### **Fewer Copies of Applications Required to be Filed with the Commission**

In order to reduce costs for plan administrators, the Commission has decided to reduce from 25 to 18 the number of copies of applications that are required to be filed with the Registrar by those making application to the Commission.

### **Uploads to the BBS Since the Fall, 1995**

There were four uploads to the BBS since the summer issue of the *PCO Bulletin*. These occurred on November 29, 1995, December 12, 1995, January 8, 1996 and February 8, 1996.

Upload highlights include:

- November 29, 1995 - a policy (A700-250) respecting *Asset Transfers under Section 81 - Superintendent's Consent Required* and a decision of the Commission in the matter of ESSROC Canada Inc. (XDEC-31).
- December 12, 1995 - a policy (A300-500) concerning a new procedure for *Communications among the PCO, Plan Administrators and Applicants* which took effect on January 1, 1996. The procedure is intended to ensure clear communication among the parties, streamline the decision making process and provide applicants with more timely decisions.
- January 8, 1996 - announcement respecting the 1996 *Maximum Annual Withdrawal Amount Table for Ontario Life Income Funds (LIFs)* indexed as L050-652.
- February 8, 1996 - policy (F800-030) respecting *Funding Requirements for Designated Plans* and a decision of the Commission in the matter of the Ferro Canadian Employees' Pension Plan (XDEC-32).



## Internal Plan Reallocation Could Affect You

In order to balance the workload among PCO staff, certain plans have recently been assigned to different pension officers or analysts. This is expected to improve service to our stakeholders in the long run and we apologize for any short term loss of continuity.

The new allocations are listed on the inside back cover. If you have any concerns or questions relating to this re-allocation, please contact Pauline Dawson at 416-314-0599 or by fax at 416-314-0650.

## Stakeholders Requested to Observe Published Procedures (P500)

With this issue, we are introducing a new category (P500) to the subject index of published information for procedural matters affecting administration, applications and tribunal matters (also refer to article on page 9).

## Procedures Will Speed Processing, Approvals and Proceedings

The Superintendent of Pensions pointed out in this issue's lead article that PCO staff are making every effort to ensure the continuation of high quality service to stakeholders in spite of a reduction in staff and resources. PCO staff are relying on the goodwill and co-operation of stakeholders to observe the PCO's published procedures. By doing so, the processing of applications, filings and submissions and other day-to-day administrative matters will be facilitated.

The procedures listed below have been approved by the Commission. Budget constraints prevent their publication at this time. Copies of these procedures will be made available from PCO reception after March 18, 1996. Because of its importance, the rules of practice of the Commission for proceedings under section 89 of the PBA are published in this issue. Henceforth, all section 89 hearings will be conducted in accordance with these rules.

Subject	Index No.	Title
• Administration	P500-003	Records Maintenance and Retention
• Applications	P500-400	Surplus Refund Applications on Wind Up - Transmittal to the Commission
• Applications	P500-401	Surplus Refund Applications on Wind Up - Acknowledgement of Applications, Representations and Communication of Commission Decision
• Applications	P500-402	Surplus Refund Applications on Wind Up - Late Representations and Submissions
• Tribunal	P500-750	Commission Meetings - Purpose and Procedures
• Tribunal	P500-760	Rules of Practice for Proceedings Under Section 89 of the PBA
• Tribunal	P500-761	Draft Consent Document
• Tribunal	P500-762	Release of Hearing Documents Filed with the Commission
• Tribunal	P500-763	Records of Proceedings for Appeal Purposes
• Tribunal	P500-780	Pre-Hearing Conference Procedures
• Tribunal	P500-781	Role of the Presiding Officer at Pre-Hearing Conference
• Tribunal	P500-782	Notice of Pre-Hearing Conference
• Tribunal	P500-783	Pre-Hearing Conference Documents Filed with the Commission

## Budget Constraints Affect Publication

We regret that certain Commission decisions with reasons cannot be published at this time due to budget constraints. However, all of these decisions with reasons were published previously on the BBS and are available from PCO reception on March 18, 1996. They include:

- 1) XDEC-30 Imperial Oil Limited Pension Plan (PN 0347054 and PN 0344002)
- 2) XDEC-31 Pension Plan for Hourly Employees of ESSROC Canada, Inc. (PN 0544973), and
- 3) XDEC-32 Ferro Canadian Employees' Pension Plan (PN 0246371)

## Enforcement Matters to be Published in *PCO Bulletin*

Beginning with this issue of the *PCO Bulletin* we will be announcing any charges that are laid under the *PBA* (unless otherwise indicated, references are to the *PBA*, 1990 and Regulation 909).

### Forum Sports Inc., Guelph, Ontario

On November 30, 1995 charges were laid against Forum Sports Inc. ("Forum"), PN 0587329, as administrator of the Revised Pension Plan for Employees of Forum Sports Inc. and a director and officer of Forum. The charges relate to:

- failure to remit funds to the pension plan in accordance with subsection 55(2) of the Act,
- failure to file Annual Information Returns ("AIRs") for the years ended January 31, 1991 and January 31, 1994 in accordance with subsection 20(1) of the Act and subsection 18(1) of the Regulation, and
- failure to provide members with their annual written statements in accordance with subsection 27 of the Act and subsection 40(1) of the Regulation.

A trial date is set for April 30, 1996 in the Ontario Court (Provincial Division) in Guelph, Ontario.

### Pritchard Andrews Company of Ottawa Limited, Ottawa, Ontario

On December 1, 1995 charges were laid against Pritchard Andrews Company of Ottawa Limited ("Pritchard Andrews"), PN 0591388, as administrator of the company's pension plan, and a director and officer of Pritchard Andrews. The charges relate to:

- failure to file AIRs for the 1990 - 1994 fiscal years in accordance with subsection 20(1) of the Act and subsection 18(1) of the Regulation, and
- failure to file triennial valuation reports in 1990 and 1993 pursuant to subsection 14 of the Regulation.

A trial date is set for February 29, 1996, Ontario Court (Provincial Division) in Toronto at 60 Queen Street West in Courtroom N at 9:00 a.m.

### Peoples Jewellers Limited, Toronto, Ontario

On February 14, 1996 charges were laid against Peoples Jewellers Limited, ("Peoples"), PN 0597666, as administrator of the company's Executive Pension Plan, and a former director and officer and a former officer of Peoples. The charges relate to:

- failure to remit contributions to the pension plan in accordance with subsection 55(2) of the Act,
- failure to invest in accordance with section 62 of the Act and subsection 67(9) of the Regulation involving an investment made with the assets of the pension fund in the securities of Peoples contrary to subsection 70(1) of the Regulation,
- failure to exercise the care, diligence and skill in the administration and investment of the pension fund under subsection 22(1) of the Act and failure to use in the administration of the plan and the fund all the relevant knowledge and skill it possessed or ought to have possessed under subsection 22(2) of the Act and the failure by the individual defendants to abide by those standards pursuant to subsection 22(8) of the Act,
- failure to file a triennial valuation report in 1990 in accordance with subsection 20(2) of the Act and subsection 14 of the Regulation,
- failure to file AIRs for the years 1987 to 1992 in accordance with subsection 20(1) of the Act and subsection 18(1) of the Regulation,
- failure to file financial statements in accordance with subsection 20(2) of the Act and subsection 76(1) of the Regulation, and
- failure to file a statement of investment policies and goals in accordance with subsection 20(2) of the Act and subsection 67(5) of the Regulation.

The first appearance will be on March 29, 1996 at 9:00 a.m. in Courtroom C, Ontario Court (Provincial Division), 60 Queen Street West in Toronto.



**Pension Funds are Locked-In Under Section 63**

**Prior Consent of the Commission is Required for Refunds of  
Member Contributions or Deemed Additional Voluntary Contributions**

It has come to the attention of PCO staff that, in a few instances, contrary to the locking in provisions of the *PBA*, administrators have allowed the refund of member contributions. Such refunds are not permitted without first obtaining the prior consent of the Commission as required under subsections 63(7) and (8) of the Act,

- “(7) Despite subsection (1), on application by the administrator, contributions may be refunded to a member or a former member with the consent of the Commission.
- (8) On application by the administrator of a pension plan, the Commission may consent to a refund under subsection (7) if the pension plan provides or has been amended to provide for the refund and the employer has assumed responsibility for funding all pension benefits associated with the contributions.”

Administrators are also reminded that if a plan has been amended to deem required contributions to be additional voluntary contributions, the requirements of subsection 63(8) will apply. An application to the Commission for its consent in accordance with subsection 63(7) must be made at the time the plan is so amended. Please refer to the policies and procedures titled *Applications to the Commission - Consent to a Refund* (R400-100) and those dealing with the refund of AVCs to active members (R400-106).

## Commission Procedures Sub-Committee - Procedures Ready for Publication

The Procedures Sub-Committee was established to develop procedural guidelines and standards relating to judicial, administrative and certain other functions of the Commission.

The need for standardized procedures include:

- ensuring the Commission and PCO staff discharge their duties in accordance with the statutory mandate and authority under the Act;
- ensuring equitable treatment among cases;
- clarifying the duties of the Registrar and PCO staff in respect of supporting the Commission to discharge its duties;
- informing the industry about the process to follow in making applications to the Commission in order to facilitate processing and approvals;
- informing individuals about the process to follow in making a representation to the Commission in respect of an application and to ensure that a respondent's interests are fully and properly represented before the Commission;

- informing newly appointed Commission members about their responsibilities, authorities and decision-making process;
- identifying situations where the Act may not provide sufficient authority for the Commission to discharge its duties or, where the Act may impose duties that are no longer appropriate and to advise the Minister as required; and
- identifying deficiencies and anomalies in the procedural provisions of the Act and recommend regulatory changes to deal with them.

The Procedures Sub-Committee has developed a number of procedures which have been approved by the Commission. Some of these are published in this issue. A new index series, P500, was established for cataloguing material that is mainly procedural in nature. Procedures of an administrative nature are indexed from P500-001, those dealing with applications are indexed from P500-400 and procedures related to tribunal matters begin at index number P500-750.

### **Procedures Relating to Administration, Applications, Tribunal Matters and Decisions of the Commission**

Procedures relating to administration, applications, hearings, pre-hearing conferences and related administrative matters have been approved although budget constraints prevent their publication at this time. This material will be available in hard copy format from PCO reception on March 18, 1996. The material relating to tribunal matters will be of interest mainly to the legal community.

Copies of Commission decisions with reasons already published on the BBS as XDEC-30 (Imperial Oil), XDEC-31 (Essroc) and XDEC-32 (Ferro) will be available from PCO reception after March 18, 1996.



## Policies and Procedures

SECTION	Procedures - Administration
INDEX NO.	P500-001
TITLE	Communications Between the PCO and Plan Administrators
APPROVED BY	The Superintendent of Pensions
PUBLISHED	Bulletin 6/3 (Winter – Spring 1996)
EFFECTIVE DATE	When Published

### **Communications Between the PCO and Plan Administrators**

As a means of improving service to plan administrators and persons who act on their behalf, the PCO is announcing changes in its procedures for communicating with administrators and applicants and, for dealing with applications to either the Superintendent or the Commission.

#### Administrators Copied on All Communications

Effective from the beginning of 1996, the administrator of a pension plan will receive a copy of any communication sent by the PCO to a person acting on behalf of the administrator. Accordingly, responses to filings or applications made by actuaries, lawyers or other persons acting for a plan administrator will be routinely copied to the administrator.

This procedure is consistent with the obligation imposed on the administrator of a plan by the *Pension Benefits Act*, to file certain prescribed documents with the Superintendent, or to make application to either the Superintendent or the Commission in respect of certain matters. Copying the administrator on the PCO's responses to such filings or applications respects the statutory role assigned to the administrator and allows him or her to monitor the status of a filing or application.

#### Applicants to Receive More Timely Decisions

The Commission is also announcing that effective January 1, 1996 it will change the way it responds to those applying to the Superintendent or Commission

under the Act to ensure that they receive decisions in a timely manner. Currently, when applications are judged to be deficient in some respect, staff frequently engage in lengthy exchanges of correspondence with applicants in an attempt to rectify the perceived deficiencies. This has been the source of considerable frustration both for applicants and staff.

For applications to the Commission involving a return of surplus to the employer, a detailed practice (S900-501) has been published. Other applications to the Commission should follow a similar approach. Staff's comments on an application will be included in a memorandum from staff to the Commission. A copy of staff's memorandum will be provided to the applicant. The applicant will then have the opportunity to submit a response to the staff memorandum for consideration by the Commission when it makes its decision on the application.

Starting in January 1996 the decision making process for applications to the Superintendent will also be streamlined. Should staff believe that an application does not comply with the Act or that it does not satisfactorily address the matters set out in the Commission's policies, staff will advise the applicant accordingly. That response will refer the applicant to the sections of the Act that have not been complied with or to policy provisions that have not been adequately addressed. The applicant will be given an opportunity to respond. Thereafter (except for any legal or actuarial issues that may be identified) the application will be forwarded to the Superintendent for decision, without further contact with the applicant. When a decision is taken it will be communicated to the applicant in the usual manner.

SECTION	Procedures - Administration
INDEX NO.	P500-002
TITLE	Photocopies of Files under Section 30 of the PBA
APPROVED BY	The Superintendent of Pensions
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### Photocopies of Files under Section 30 of the PBA

### 3) File Reading Room Appointments

#### 1) Photocopying of Contents of Plan Files by the Reviewer

For individuals who make an appointment at the PCO to review plan files, a photocopier is now available exclusively for the purpose of making copies of individual pages or full documents from the plan file. The cost is \$.50 per page (as prescribed by subsection 45(2) of the Regulations). Payments may be made in cash or, if being paid by company cheque, payment is required within 30 days\*. Cheques are payable to the Minister of Finance.

#### 2) Photocopying of Full Documents and Full Files by the PCO (Individual Page Photocopies Are Not Available)

Effective April 1, 1996, requests from individuals for photocopies of full documents and files will be forwarded to a government copy centre located at 250 Yonge Street. The PCO no longer has staff resources available for photocopying individual pages from documents and files. The cost of this service is also \$.50 per photocopy.

Appointments will be for a full morning (9:00 a.m. to 12:00 noon) or for a full afternoon (1:00 to 4:00 p.m.). Double appointments (full day) for the file reading room will be considered. We cannot schedule more than one reviewer at a time. A maximum of two appointments per day is the limit. There are no exceptions.

*\*Although, it is not strictly in accordance with the Act, the PCO will release photocopies without advance payment. Payments by cheque (payable to the Minister of Finance) are required within 30 days.*



SECTION	Assets
INDEX NO.	A700-250
TITLE	Asset Transfers under Section 81 - Superintendent's Consent Required
APPROVED BY	The Pension Commission of Ontario
PUBLISHED BBS	November 29, 1995
PUBLISHED BULLETIN	Bulletin 6/3 (Winter – Spring 1996)
EFFECTIVE DATE	When Published

### **Asset Transfers under Section 81 - Superintendent's Consent Required**

1. Where there is a proposal to transfer all of the assets from the pension fund of a pension plan registered in Ontario to the pension fund of another pension plan, and the transfer is not subject to either section 42 or section 80 of the *Pension Benefits Act*, R.S.O. 1990, (the "Act"), the transfer is subject to section 81 of the Act. (Transfers from pension plans registered in other jurisdictions are subject to the legislation of the applicable jurisdiction.)
2. Where section 81 applies, no transfer of assets may be made without the prior consent of the Superintendent under either of subsections 81(4) or 81(8) of the Act. This policy has been developed to assist in the preparation of applications for the Superintendent's consent. The Superintendent will consider each application on a case-by-case basis.
3. (a) The Superintendent's prior consent to any asset transfer which affects a group of plan members who have not made transfer elections under section 42 of the Act must be obtained in accordance with either of subsections 81(4) or 81(8) of the Act unless, the transfer is subject to subsection 80(10) of the Act.
  - (b) Generally, this policy does not apply to asset transfers made in respect of individual plan members pursuant to a reciprocal transfer agreement. A reciprocal transfer agreement may be a separate filed document or may be contained in other filed documents that create and support a pension plan. Such an agreement might cover, for example, asset transfers respecting the reclassification of hourly employees to salaried status.
4. For the purpose of this policy, the term "exporting plan" refers to each pension plan from which an asset transfer is proposed, and prior to any transfer(s) taking place, to the pension plan that will receive the assets. The term "importing plan" refers to the pension plan to which the assets will be transferred, after the transfers have taken place. (For example, if a transfer proposal affects five pension plans, there are five "exporting plans" for the purpose of this policy. Assuming that assets are transferred from four pension plans at the effective date of transfer, the assets of five exporting plans will be held in the pension fund of the "importing plan".)
5. The term "effective date of transfer" means the effective date of the amendment(s) which gives rise to the transfer(s) of assets from the exporting plan(s) to the importing plan.

6. (a) "Transfer ratio" means a transfer ratio calculated in accordance with the transfer ratio definition under section 1 of the Regulations under the Act (the "Regulations"). Transfer ratios are calculated at the effective date of transfer.
  - (b) "Going concern valuation" means a valuation performed in accordance with the going concern valuation definition under section 1 of the Regulations.
  - (c) "Solvency valuation" means a valuation performed in accordance with section 17 of the Regulations.
  - (d) "Report(s)" for exporting plans that provide defined benefits are prepared in accordance with section 13 below.
  - (e) The "report" for the importing plan is prepared in accordance with sections 14 and 15 or section 17, as applicable.
7. In accordance with subsection 81(5) of the Act, the Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits (the "benefits") of the members and former members.
  8. The Superintendent may decide that the benefits are not protected where:
    - (a) the transfer ratio of the importing plan is less than the highest transfer ratio of the exporting plans, and is less than 1.0; or
    - (b) the report for the importing plan indicates that a going concern unfunded liability and/or a solvency deficiency exists, and the scheduled amount of the monthly special payments for the importing plan is less than the combined scheduled amounts of the monthly special payments required for the exporting plans.
  10. The application should identify, by name and registration number, the exporting plans affected by the transfer proposal and the market value of assets to be transferred from each applicable exporting plan at the effective date of transfer.

## **Statements/Actuarial Reports**

### **Pension Plans that Provide Defined Benefits**

11. For the purpose of sections 13, 14 and 15 below, the actuarial methods and assumptions used in preparing the reports for the exporting plans and the importing plan should be on a consistent basis. (For example, the economic assumptions underlying the actuarial bases for the reports should not differ.)
12. For the exporting plans, the applicant should include either:
  - (a) a statement prepared by the actuary, that in his/her opinion, the transfer ratio of each of the exporting plans is at least 1.0; or
  - (b) where the statement under (a) is not included, or the report for the importing plan indicates that special payments are required to be made, report(s) for the exporting plans prepared in accordance with section 13 below.
13. (a) A report should be prepared for each of the exporting plans at the effective date of transfer if any of the exporting plans has a transfer ratio of less than 1.0 and the transfer ratio of the importing plan is less than 1.0, or if the report for the importing plan indicates that special payments are required. Alternatively, a single consolidated report which includes information relating to each of the exporting plans may be prepared.
- (b) For each exporting plan, the report(s) should include a going concern valuation and a solvency valuation. In addition to the transfer ratio, the amount of any going concern unfunded liability and/or solvency deficiency and the amount of any special payments, including the amortization period, required to liquidate the going concern unfunded liability and/or solvency deficiency should be identified.

## **The Application**

9. An application for the Superintendent's consent to a transfer of assets should include all of the information, statements or reports, as the case may be, identified in this policy.



14. (a) A report prepared for the importing plan at the effective date of transfer must be filed with the application. The report will be treated as a report for an ongoing plan and must meet the requirements of section 14 of the Regulations. (For example, the funding requirements for the normal cost and any going concern unfunded liability and/or solvency deficiency must be identified.)

(b) In determining the solvency deficiency, if any, of the importing plan, the portion of the "solvency asset adjustment" (consisting of items (b), (c), and (d) in the definition under subsection 1(2) of the Regulations) should take into account only those special payments required to amortize any going concern unfunded liability in the importing plan.

15. (a) Where the report for the importing plan indicates a going concern unfunded liability and/or a solvency deficiency, the scheduled amount of the monthly special payments should be no less than the combined scheduled amounts of the monthly special payments required for the exporting plans. Appropriate adjustments should be made to the amortization period(s) and, if applicable, the special payments so that the present value of the special payments for the importing plan equal the going concern unfunded liability and/or solvency deficiency, as the case may be.

(b) Payment(s) which are not less than the scheduled amount of the monthly special payments for the importing plan must be continued until the date on which the going concern unfunded liability and/or solvency deficiency identified for the importing plan at the effective date of transfer is fully amortized or otherwise liquidated.

#### **Pension Plans that Provide Defined Contribution Benefits**

16. For exporting plans, the applicant should include a statement that identifies the assets and liabilities of each plan, determined as if each plan terminated at the effective date of transfer.

17. A report (cost certificate) prepared at the effective date of transfer for the importing plan must be filed with the application. The report will be treated as a report (cost certificate) for an ongoing plan.

#### **Transfers to a Multi-Employer Pension Plan**

18. Where a transfer of assets from a pension plan that provides defined benefits to a multi-employer pension plan that is established pursuant to a collective agreement or trust agreement (a "MEPP") is proposed, the Superintendent may decide that the benefits of the members and former members of the exporting plan are not protected unless:

(a) annuities are purchased; or

(b) the benefits are protected in some other way that is acceptable to the Superintendent.

#### **Amendments**

19. (a) Amendments to the exporting plan(s) which provide for a transfer of assets and liabilities to the importing plan must be filed with the Superintendent. A fully restated plan text should generally be filed for the importing plan.

(b) All filed amendments must comply with the Act, the regulations, the amending provisions and any other relevant provisions of the exporting plans or any prior plans, and any other documents required to be filed for any of those plans.

(c) Amendments should also be consistent with any relevant policies of the Commission. Particular attention should be paid to established policies under Series A400 (amendments) and Series A700 (asset transfers).

20. (a) Where, in the opinion of the applicant, there is any doubt that the terms of an exporting plan restrict the employer's use of surplus in an ongoing plan and/or the employer does not have clear entitlement to surplus at wind up, the administrator of the importing plan should maintain a record of information about the exporting plan at the effective date of transfer. The information should be sufficient to identify the affected persons and their respective benefits as at the effective date of transfer, if the importing plan is wound up. A copy of the information should be provided to each trade union that represents the members and/or former members of an exporting plan.

- (b) At a minimum, the record of information about the exporting plan should include the names of the members and former members, their respective benefits (including accrued pension benefits and ancillary benefits), the market value of assets, and the amount of the plan liabilities.

### **Notice**

21. For each exporting plan, prior to the date of application, the administrator should transmit individual written notice of the application by personal delivery or by first class mail to:

- (a) each member and former member of the pension plan;
- (b) each trade union that represents members of the plan; and
- (c) any advisory committee established in respect of the plan.

22. Notice should include:

- (a) (i) the name and registration number of the exporting plan of the member or former member; or
- (ii) the name and registration number of the exporting plan to which the trade union or advisory committee relates;
- (b) the effective date of transfer;
- (c) the name and registration number of the importing plan;
- (d) the names and registration numbers of the other exporting plans;
- (e) an explanation of the proposed transfer of assets, including the transfer ratios of the exporting plan and the importing plan, and information concerning how benefits will be protected under the terms of the importing plan; and

- (f) advice that comments on whether the proposal protects benefits may be submitted to the administrator and to the Superintendent within a forty-five (45) day period following receipt of the notice.

23. (a) Where the transfer is to a MEPP, the notice should indicate that the transferred benefits may no longer be covered by the Pension Benefits Guarantee Fund and, generally, could be reduced in accordance with subsection 14(2) of the Act.

- (b) Specific details about how the benefits will be protected in the MEPP under the circumstances determined in accordance with section 18 of this policy should be included in any explanation provided under clause 22(e) above.

24. A copy of the notice should be provided to the Superintendent along with a certification by the administrator of the date on which the last notice was transmitted, the persons or bodies to whom notice was transmitted, and the method of delivery of notice.

25. The Superintendent may accept other forms of notice under appropriate circumstances. Where another form of notice is contemplated, the applicant should justify the need for alternative service.

### **Proposals to Transfer a Portion of the Assets**

26. Where an application is made under section 81 of the Act for the Superintendent's consent to transfer a portion of the assets of a pension plan, the application will be considered on the basis of this policy and Policy A700-200 (Asset Transfer Resulting from Sale of Business). These policies identify situations under which the Superintendent may decide that the pension benefits and any other benefits of the members and former members are protected. Appropriate modifications will be considered on a case-by-case basis. For more details please refer to Policy A700-225 - Superintendent Consent Required for Asset Transfer under subsection 81(8).



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### **Pension Benefits Guarantee Fund - Filing Requirements and Procedure**

The purpose of this paper is to identify the filing requirements and procedure for making a claim against the Pension Benefits Guarantee Fund where the administrator of a pension plan which is being wound up in whole or in part believes that the Guarantee Fund applies to the pension plan. It is hoped that administrators and their agents will use this information to prepare Guarantee Fund filings in order to ensure that they comply fully with the requirements of the *Pension Benefits Act* and Regulations and address related policies of the Commission. Improved compliance will enable PCO staff to process claims against the Guarantee Fund more quickly and efficiently.

The material which follows is general in nature and is intended for guidance only. Since the provisions and history of each pension plan are unique, it is not possible to identify all issues which may be relevant to every situation. If an administrator wants to proceed with a Guarantee Fund application in a manner different than that described in this procedure, it is the administrator's responsibility to demonstrate that the application complies with the *Pension Benefits Act* and Regulations.

### **Plans Excluded**

This procedure applies only to pension plans which provide benefits guaranteed in whole or in part by the Guarantee Fund. Accordingly, plans that do not provide benefits guaranteed in whole or in part by the Guarantee Fund on or after wind up, such as plans which provide only defined contribution benefits, multi-employer pension plans, defined benefit pension plans where the obligation of an employer to contribute is limited to a fixed amount set out in a collective agreement or those pension plans specifically exempted by the Regulations, are excluded.

*Throughout this document, the Act refers to the Pension Benefits Act, R.S.O. 1990, Chapter P.8 and the Regulations refer to Regulation 909, R.R.O. 1990, as amended.*

*Although we have tried to be thorough, it is not possible to anticipate and address all Guarantee Fund situations. Administrators, therefore, are reminded that the application of the Act and Regulations is subject to the facts of each case. Accordingly, the contents of this procedure should not be construed as legal, actuarial or professional advice. Independent professional advice should be obtained if you have a particular interest in any of the matters addressed in this paper.*

## Glossary

For the purposes of this paper:

- “guaranteed benefits” means the benefits guaranteed by the Guarantee Fund pursuant to section 84 of the Act taking into account the benefits excluded under section 85 of the Act and subsection 47(2) of the Regulations;
- “included benefits” means the benefits provided under subsection 34(5) of the Regulations.

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## SECTION I - Making a Claim Against the Guarantee Fund: An Overview

The purpose of the Guarantee Fund is to guarantee payment of certain benefits in respect of employment in Ontario in the event a pension plan is wound up in whole or in part under certain circumstances. Subsection 83(1) of the Act provides that the Pension Commission of Ontario (the “Commission”) shall declare that the Guarantee Fund applies to a pension plan in the following circumstances (subsection 83(2)):

- (a) *the pension plan is registered under this Act or is registered in a designated province to provide for the reciprocal application of this Act;*
- (b) *the pension plan provides defined benefits that are not exempt from the application of the Guarantee Fund by this Act or the regulations;*
- (c) *the pension plan is wound up in whole or in part; and*
- (d) *the Commission is of the opinion, upon reasonable and probable grounds, that the funding requirements of this Act and the regulations cannot be satisfied.*

This section describes the procedure for making an application to the Commission for a declaration under section 83 of the Act and for an allocation from the Guarantee Fund under subsection 34(7) of the Regulations.

### 1.1 Wind Up of a Pension Plan

Subsection 68(1) of the Act provides that a decision to wind up a pension plan in whole or in part may be made by the employer of the pension plan. Where an employer is no longer in existence, or is no longer empowered to wind up a pension plan (due to bankruptcy, for example), the Superintendent of Pensions (the “Superintendent”) may issue an order pursuant to his authority under section 69 of the Act requiring the wind up of the plan. In some circumstances, the Superintendent may appoint an administrator to wind up the pension plan, as provided under subsection 71(1) of the Act.

### 1.2 Filing of Wind-Up Report

The administrator of a pension plan that is being wound up in whole or in part is required to file a wind-up report setting out the information as specified under subsection 70(1) of the Act. Subsection 2.1 of this procedure identifies the information that should be contained in a wind-up report filed in support of a claim against the Guarantee Fund.

### 1.3 Guarantee Fund Application

#### 1.3.1 Timing of Application

Generally, the wind-up report should be filed with, and approved by the Superintendent before an application is considered by the Commission for a declaration that the Guarantee Fund applies to a pension plan. The administrator may file the application with the wind-up report or await the Superintendent’s approval of the wind-up report prior to filing the application.

If the administrator wishes the Commission to consider an application prior to the Superintendent’s approval of the wind-up report, the administrator should identify the unique situation which warrants consideration of such an application by the Commission. An example of a unique situation may be a large plan that is very poorly funded and for which the wind up will take a protracted period of time due to complex issues which must be resolved. In order to avoid imposing extreme financial hardship on the pensioners by immediately reducing pension payments to the level the pension fund can support, the administrator may apply for a declaration that the Guarantee Fund applies and an interim allocation to maintain pension payments while the wind up process carries on.

#### 1.3.2 Content of Application

It is the responsibility of the administrator to make an application to the Commission for a declaration that the Guarantee Fund applies to a pension plan. The application is filed with the Commission by sending 18 copies to:

The Registrar  
Pension Commission of Ontario  
250 Yonge Street, 29th Floor  
Toronto ON M5B 2N7

The application to the Commission for a declaration should be prepared in a format consistent with Appendix A.1 at the end of this procedure. The documents that should normally accompany an application include the following:

- the Superintendent's order winding up the pension plan, if applicable;
- the letter from the Superintendent approving the wind-up report (if approved); and
- extracts of the wind-up report consisting of a copy of the title page and the balance sheet showing the funded status of the pension plan as of the effective date of wind up, and the actuary's certification.

If subsequent to the effective date of wind up there is a change in the financial condition of the plan that is material to whether the conditions are satisfied for the Commission to declare that the Guarantee Fund applies, the administrator should provide evidence supporting the extent to which the funding requirements of the Act and Regulation cannot be met at the date the application is considered by the Commission. The evidence may be in the form of a supplement to the wind-up report as described in subsection 2.2 of this procedure or in the form of a cost certificate in which the actuary certifies that the assets of the plan would not be sufficient to cover the liabilities of the plan as at the date of application.

Staff will review an application, and provide their comments and conclusions in respect of the application in a submission to the Commission. A copy of that submission will be provided to the applicant 14 days prior to the Commission meeting at which the application is to be considered. Applicants who wish to respond to staff's submissions must file their response with the Registrar 9 days prior to the Commission meeting at which the application is scheduled to be heard or request that consideration of the application be deferred if more time is required.

### 1.3.3 Notice of Proposal

Subsections 90(1), (2) and (3) of the Act provide as follows:

90.-(1) *Where the Commission proposes to consider,*

(a) *making a declaration that the Guarantee Fund applies to a pension plan;*

(b) ...

(c) ...

*the Commission shall serve notice of the proposal together with written reasons therefor on the administrator of the pension plan.*

(2) *The administrator shall transmit copies of the Commission's notice to such other persons or classes of persons or both as the Commission specifies in the notice to the administrator.*

(3) *A notice by the Commission under subsection (1) shall state that the administrator, the persons and the representatives and members of classes of persons specified in the notice are entitled to make written representations to the Commission within thirty days after service of the notice under that subsection.*

The administrator must provide advice to the Registrar as to the last date the administrator transmitted the Commission's notice to the required parties.

### 1.3.4 Declaration that the Guarantee Fund Applies

The Registrar will place the application on the agenda for the Commission meeting next following the expiry of forty-five days after the last notice was transmitted by the administrator. At that meeting the Commission will consider the application along with any representations received as a result of the notice when deciding whether to declare that the Guarantee Fund applies.



Pursuant to subsection 90(5) of the Act, the Commission shall transmit a copy of its decision, together with written reasons, to the administrator, the employer (if applicable) and any other person who made representation to the Commission.

In accordance with section 91 of the Act, a party to a proceeding before the Commission under section 90 may appeal to the Divisional Court from the decision of the Commission.

#### 1.4 Allocation from the Guarantee Fund

The administrator may apply to the Commission for an allocation of funds from the Guarantee Fund pursuant to subsection 34(7) of the Regulations for purposes of settling all benefits once the following have occurred:

- (a) the wind-up report has been approved by the Superintendent;
- (b) the administrator has issued the election forms to the members, former members and other persons entitled to make elections, and has either received the completed elections or there is a deemed election pursuant to subsection 72(2) of the Act; and
- (c) the Commission has declared that the Guarantee Fund applies to the pension plan. (Note that an application for allocation may be consolidated with the application for a declaration that the Guarantee Fund applies provided conditions (a) and (b) above have been satisfied.)

The application for an allocation from the Guarantee Fund should generally be made in close proximity to the date when the administrator will be in a position to process settlements (commuted value transfers and annuity purchases) in order that the actual allocation required may be determined with some accuracy.

If the allocation approved by the Commission is not sufficient to complete the wind up, a further application to the Commission will be required. In order to avoid the cost and time required for additional applications, the initial application for an allocation from the Guarantee Fund should include some margin for adverse deviations from the date of the application to the settlement date.

The application is made by filing with the Registrar 18 copies of an application in the format set out in Appendix A.2 under this procedure.

The attachments which should normally accompany the application include the following:

- the Commission's declaration that the Guarantee Fund applies to the pension plan;
- extracts of the wind-up report consisting of a copy of the title page and the page(s) containing the information on the estimated claim against the Guarantee Fund as of the effective date of wind up, and the actuary's certification; and
- the letter from the Superintendent approving the wind-up report.

In addition the administrator must provide an up-to-date estimate of the claim against the Guarantee Fund (at a date as close as possible to the date of application) and the projected time frames for fully disbursing all entitlements. The up-to-date estimates may be provided in the form of a supplement to the wind-up report (refer to subsection 2.2 of this procedure).

If the application is accepted by the Commission, it will approve an allocation from the Guarantee Fund of the funds required to supplement the plan assets in order to pay 100 per cent of the benefits guaranteed by the Guarantee Fund plus a proportion of other benefits as prescribed in subsections 34(5) and (6) of the Regulations.

After the Commission has approved the allocation from the Guarantee Fund and the administrator has completed all preparations to proceed with the distribution of lump sum settlements and/or the purchase of annuities, the administrator should submit a request to the PCO staff responsible for the plan identifying the specific amount required in order to complete lump sum settlements and/or purchase annuities. PCO staff will arrange for the disbursement to be made from the Guarantee Fund to the pension fund, normally within two business days of the request. In the event an annuity provider will not hold their quotation for two business days, the administrator should contact the PCO staff in advance to arrange to have the funds from the Guarantee Fund available by the closing date for the quotation.

Upon receipt of funds from the Guarantee Fund, the administrator should proceed with the disbursement of benefits in accordance with the elections made by the affected persons.

## 1.5 Reconciliation of Payments

Once all benefits have been settled, the administrator is expected to provide a reconciliation of the pension fund including all disbursements, Guarantee Fund allocations, and any recoveries made from the assets of the insolvent employer.

## SECTION II - Preparing the Wind-up Report

Often, when the administrator is making an application to the Commission for a declaration that the Guarantee Fund applies or for an allocation from the Guarantee Fund, the financial information on the pension plan as provided in the report(s) previously filed in connection with the wind up may be out of date. In such circumstances, it may be necessary to file a supplement to the wind-up report providing an update of the funded status of the pension plan or the estimated claim against the Guarantee Fund.

The required disclosures in the initial wind-up report and the subsequent supplement(s) are outlined below.

### 2.1 Initial Wind-up Report

The basic requirements of a wind-up report filed under subsection 70(1) of the Act are described in procedure W100.101. This subsection identifies the additional information that should be provided in a wind-up report in support of a claim against the Guarantee Fund.

#### 2.1.1 Benefits Upon Guarantee Fund Declaration

The wind-up report should describe the guaranteed benefits and included benefits (defined in the Glossary at the beginning of this procedure) in detail. Appendix B addresses some technical issues related to the determination of guaranteed benefits and included benefits when the Guarantee Fund is declared to apply.

For the purpose of determining the included benefits, the Commission requires that the ratio referred to in subsection 34(6) be determined *as of the wind-up date, without regard to any plan experience or changes in annuity purchase rates subsequent to the wind-up date*. The provision for expenses related to employment in Ontario, based on the administrator's initial estimate of expenses that would be incurred to complete the wind up and Guarantee Fund application(s) (normally provided at the time the administrator was appointed by the Superintendent), should be deducted from the Ontario assets before the ratio is calculated.

#### 2.1.2 Membership Data

Where a wind up involves members in more than one jurisdiction, the report should provide a summary of statistics for various categories of membership (e.g., members, deferred vested former members, retired former members etc.) within each jurisdiction of employment.

Pursuant to subsection 29(5) of the Regulations, the report should include sufficient information so as to permit PCO staff to determine the persons whose pension benefits are guaranteed under section 84 of the Act, the amounts of such guaranteed benefits and the amounts to be contributed to the plan under section 75 of the Act. PCO staff may request a listing of members and former members (only those with Ontario employment) and other eligible persons showing the information as described in subsection 2.2 of procedure W100.101. *For reasons of privacy, such information should be provided in an anonymous form, i.e., no names, social insurance numbers or other personal identifiers should be provided.* It should be a part of a detachable list should members wish to review the report.

Unless sufficient information has already been included in the wind-up report to permit PCO staff to assess the calculations of guaranteed benefits, included benefits, Guaranteed Benefit liability, Ontario wind up liability, modified Ontario wind up liability (if applicable), and the liability for included benefits (see Appendix B of this procedure), sample calculations should be made available under separate cover if requested by PCO staff.



### 2.1.3 Financial Position of the Plan on Wind Up

The report should provide information on the funded status of the pension plan as of the effective date of wind up, in accordance with procedure W100.101. Where the plan covers members and former members in more than one jurisdiction, a valuation balance sheet showing the assets and liabilities as of the effective date of wind up should be established for Ontario employment and non-Ontario employment separately.

Section 30 of the Regulations prescribes how the assets of the plan are to be allocated between Ontario employment and non-Ontario employment. Specifically, the market value of assets, with adjustments for receivables or payables at the effective date of wind up and excluding the value of any qualifying annuity contract and additional voluntary contributions plus interest, is allocated between Ontario employment and non-Ontario employment in proportion to the basic liabilities as defined in clause 30(2)(b). The portion of assets allocated to Ontario employment is termed Ontario assets. The distribution of assets allocated to another jurisdiction should be dealt with in accordance with the requirements of that jurisdiction.

### 2.1.4 Estimated Claim Against the Guarantee Fund

In addition to the valuation balance sheet, the report should provide an estimate of the claim against the Guarantee Fund as of the effective date of wind up. This is the amount by which the liability for included benefits exceeds the Ontario assets as of the effective date of wind up, adjusted for any provision for expenses and/or adverse deviations (see subsections 3.1 and 3.2 of this procedure). It should be noted that the final claim amount will depend on the subsequent plan experience up to and including the date at which all included benefits are settled as well as the annuity purchase rates in effect on the settlement date(s).

## **2.2 Supplement to Wind-Up Report**

A supplement to the wind-up report should be prepared on the basis of the membership data and the provisions of the pension plan used in the initial wind-up report(s) previously filed with and approved by the Superintendent. As a minimum, it should contain the information detailed below.

### 2.2.1 Purpose of the Supplement

The supplement should indicate clearly whether it is to be used for the Commission to make a declaration under section 83 of the Act or for an allocation from the Guarantee Fund under subsection 34(7) of the Regulations, or both. The effective date as of which the financial information in the supplement is reported (which for purposes of this procedure, will be called the “information date”) should be as close as possible to the date at which the application to the Commission is made.

### 2.2.2 Membership Data

The supplement should provide a summary of membership (only for persons with Ontario employment) as of the information date, unless there have not been changes in the members’ and former members’ status since the effective date of wind up. If there have been changes in the members’ and former members’ status, the report should provide a reconciliation of membership from the effective date of wind up to the information date. Changes in status may include, for example, instances where members or former members commenced to receive pensions or retired former members died after the wind-up date. Such changes may result in a change in the benefit entitlements of the members or former members.

Where there have been changes in the benefit entitlements of the members and former members as a result of their change in status, information on the benefit changes should be provided.

### 2.2.3 Financial Information

The supplement should provide financial information relevant to the particular purpose(s) of the supplement, including a valuation balance sheet showing the Ontario assets and liabilities (i.e., Ontario wind up liability or liabilities for included benefits, as the case may be) as at the information date. It should reflect the plan experience and other relevant events (e.g., changes in annuity purchase rates) occurring after the effective date of wind up and up to the information date.

Ontario assets should be updated from the effective date of wind up to the information date taking into account the benefit payments, expenses, investment gains or losses etc. as related to Ontario employment.

The liabilities in respect of members and former members who are expected to receive a commuted value transfer should be based on the commuted value at the effective date of wind up, accumulated with interest to the information date at the same rate used to calculate the commuted value. Where there has been a significant change in market interest rates since the effective date of wind up, the liabilities in respect of members and former members who are receiving or have elected to receive a pension benefit as well as those who are expected to receive a pension benefit should be revalued using the current market interest rates to approximate the cost of annuities at the information date.

#### 2.2.4 Actuarial Assumptions and Methods

The supplement should disclose the actuarial assumptions and methods used, in accordance with the standards of practice established by the Canadian Institute of Actuaries as applicable to the valuation of pension plans (the "CIA Standards"). It is acceptable to refer to the initial wind-up report(s) for those assumptions which have not been changed.

#### 2.2.5 Actuary's Statements of Opinion

The supplement must be prepared and signed by an actuary. Accordingly, statements of opinion should be given by the actuary in accordance with the CIA Standards.

### **SECTION III - Specific Issues Related to Guarantee Fund Applications**

In this section, a few specific issues related to Guarantee Fund applications are discussed. To the extent possible, the current practice with respect to those issues is explained.

#### **3.1 Provision for Expenses**

For the purpose of determining the ratio referred to in subsection 34(6) of the Regulations, subsection 2.1.1 of this procedure sets out the expense provision to be taken into account.

For all other purposes the expense provision used in the report (or supplement) should be based on the most current estimate provided by the administrator to the Superintendent of all expenses to be incurred in completing the wind up and disbursing the assets

of the plan. It should include all expenses incurred up to and including the date the report (or supplement) is prepared, if not already reflected in the market value of assets, plus the administrator's estimate of all future expenses to be incurred in completing the wind up and disbursing the assets of the plan. Only Ontario related expenses should be used for purposes of a Guarantee Fund allocation and the settling of Ontario related benefits; and non-Ontario related expenses should be used for purposes of settling any benefits related to employment in other jurisdictions.

#### **3.2 Provision for Adverse Deviations**

In establishing the funded status of a pension plan or a claim against the Guarantee Fund, the actuary may find it appropriate to include an explicit provision for adverse deviations to take account of, for example, the uncertainty of the assumptions and data for the valuation. The inclusion of a provision for adverse deviations should not be in conflict with the actuary's statements of opinion provided in the wind-up report or supplement. For instance, if a provision is made for data errors or inaccuracies, the actuary's statement of opinion as to data should be consistent.

Note that the ratio referred to in subsection 34(6) of the Regulations should be determined without regard to any provision for adverse deviations in respect of plan experience or changes in annuity purchase rates after the wind-up date.

#### **3.3 Reduction to Pensions in Payment**

Winding up a pension plan that has insufficient assets may affect pensions already in payment at the wind-up date and those due to commence after the wind-up date. Until the administrator has applied for and received the Commission's approval of an allocation from the Guarantee Fund, the administrator should decide whether it is necessary to reduce those pension payments in accordance with clause 29(9)(b) of the Regulations.

Once an allocation from the Guarantee Fund has been approved by the Commission, the administrator should make necessary adjustments to the pensions in payment to reflect the included benefits of the affected persons. When making an application for allocation, such adjustments should be reflected in the estimated claim against the Guarantee Fund.



## APPENDIX A - Format and Content of Guarantee Fund Applications

### A.1 Application for a Declaration that the Guarantee Fund Applies

**Date:** *Enter the date of the application.*

**Plan Sponsor:** *Provide the full legal name of the plan sponsor.*

**Pension Plan:** *Provide the full legal name of the pension plan.*

**Reg. No:** *Provide the registration number of the pension plan.*

**Prepared By:** *Provide the name of the person(s) or firm(s) who prepared the application.*

**Nature of the Application:**

*Provide a full description of the Commission application with reference to the specific sections of the Act and Regulations pursuant to which the application is being made. For example:*

*Application for the Pension Commission to make a declaration pursuant to subsection 83(1) of the Pension Benefits Act, R.S.O. 1990, that the Pension Benefits Guarantee Fund applies to the (insert pension plan name and registration number).*

**Administrator/Actuary/Counsel:**

*Provide the names of those persons connected to the application, namely, the administrator, agents of the employer or administrator etc. If there are no such individuals, please indicate "none".*

*Administrator of the Pension Plan (and name of firm):*

*Actuary for the Applicant (and name of firm):*

*Counsel for the Applicant (and name of firm):*

**Trustee/Receiver/Manager:**

*Provide the names of those persons or firms appointed to administer the assets of the employer if the employer is bankrupt or in receivership.*

*Trustee in Bankruptcy:*

*Receiver/Manager:*

**Collective Bargaining Agent:**

*Provide the name of the collective bargaining agent(s) who represented any members or former members of the pension plan. Identify the class (e.g., hourly, salaried etc.) and/or status (e.g., active, deferred vested, retired etc.) of employees they represented.*

**Background:**

Provide a brief summary of the background of the plan leading up to the application including:

- the effective date of the plan,
- the classes of members covered by the plan,
- the basic benefit structure (e.g. "non-contributory", "flat benefit plan")
- a brief chronology of the plan and any predecessor plans including reference to plan mergers/splits or conversions that may have occurred,
- the relevant corporate history including the background to any changes in the name of the employer associated with the pension plan,
- the effective date of wind up of the pension plan, and
- any other information which will assist in understanding the application.

Indicate the status of the wind-up report and if applicable, the date of the Superintendent's letter approving the wind-up report. Include reference to the attachments or tabs at which extracts of the wind-up report and/or supplement to the wind-up report and a copy of the Superintendent's letter can be found.

Include a summary of the balance sheet, in respect of employment in Ontario, as at the effective date of wind up along with an updated balance sheet (as provided in a supplement to wind-up report) if there has been a significant change in the funded status of the plan. In lieu of filing a supplement, the administrator may file a cost certificate in which the actuary certifies that the assets of the plan would not be sufficient to cover the liabilities of the plan as at the date of application. For example:

Balance Sheet	As of (effective date of wind up)	As of (current date)*
<b><u>Assets:</u></b>		
Ontario Assets	\$0.00	\$0.00
less:		
Provision for expenses	<u>\$0.00</u>	<u>\$0.00</u>
<b>Ontario assets available for benefits</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b><u>Liabilities:</u></b>		
Ontario wind up liability	\$0.00	\$0.00
Plus:		
Provision for adverse deviations	<u>\$0.00</u>	<u>\$0.00</u>
<b>Total</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>(Surplus) Deficit**</b>	<b>\$0.00</b>	<b>\$0.00</b>
* if information available		
** Ontario wind up liability plus provision for adverse deviations less Ontario assets available for benefits		

Indicate the ratio, determined as at the wind-up date, in accordance with subsection 34(6) of Regulation 909, R.R.O. 1990.

Where there has been a significant change in the funded status of the plan since the effective date of wind up, provide a reconciliation of the funded status identifying the significant factors contributing to the change.

## Subsection 83(2) of the Act - Conditions Precedent

### (a) Clause 83(2)(a) - The plan is registered under this Act

*Provide the Registration Number.*

### (b) Clause 83(2)(b) - The plan provides defined benefits that are not exempt from the application of the Guarantee Fund

*Provide information that demonstrates compliance with clause 83(2)(b), for example:*

The plan provides defined pension benefits that are not exempt from the application of the Guarantee Fund. The plan is over 3 years old and is not exempt from the application of the Guarantee Fund under paragraphs 4 (MEPP), 5 (negotiated defined benefit/defined contribution plans), or 6 (prescribing authority) of section 85 of the Act or sections 47, 47.1, or 47.2 of the Regulations.

### (c) Clause 83(2)(c) - The plan is wound up in whole or in part

*Indicate the effective date on which the pension plan was wound up in whole or in part, and refer to the Superintendent's order winding up the plan or the employer's declaration of plan wind up, as applicable.*

### (d) Clause 83(2)(d) - The Commission is of the opinion, upon reasonable and probable grounds, that the funding requirements of this Act and the Regulations cannot be satisfied

*Provide explanation as to why the funding requirements of the Act and Regulations cannot be met, including reference to the supporting documents.*

*In addition, the applicant should provide information concerning any non-remittance of required contributions, and demonstrate to the Commission and provide evidence, if necessary, that sufficient effort has been made to collect any funds owing to the plan at wind up. The applicant should also provide an assessment of the probability of collecting the outstanding funds in the future.*

### Attachments:

*The applicant should provide an index of all attachments to the application. Where an application is bound, the relevant tabs should be listed.*



## A.2 Application for an Allocation from the Guarantee Fund

- Date:** *Enter the date of the application.*
- Plan Sponsor:** *Provide the full legal name of the plan sponsor.*
- Pension Plan:** *Provide the full legal name of the pension plan.*
- Reg. No:** *Provide the registration number of the pension plan.*
- Prepared By:** *Provide the name of the person(s) or firm(s) who prepared the application.*

### **Nature of the Application:**

*Provide a full description of the Commission application with reference to the specific sections of the Act and Regulations pursuant to which the application is being made. For example:*

Application for the Pension Commission, pursuant to subsection 34(7) of Regulation 909, R.R.O. 1990 (the "Regulations"), to allocate from the Guarantee Fund and pay to the fund of *(insert pension plan name and registration number)* such amount, not to exceed \$*(insert amount)* which together with the assets of the plan will provide the benefits determined under subsections 34(5),(6) of the Regulations and pay the reasonable administration costs of the administrator.

### **Administrator/Actuary/Counsel:**

*Provide the names of those persons connected to the application, namely, the administrator, agents of the employer or administrator etc. If there are no such individuals, please indicate "none".*

Administrator of the Pension Plan (and name of firm):

Actuary for the Applicant (and name of firm):

Counsel for the Applicant (and name of firm):

### **Trustee/Receiver/Manager:**

*Provide the names of those persons or firms appointed to administer the assets of the employer if the employer is bankrupt or in receivership.*

Trustee in Bankruptcy:

Receiver/Manager:

### **Collective Bargaining Agent:**

*Provide the name of the collective bargaining agent(s) who represented any members or former members of the pension plan. Identify the class (e.g., hourly, salaried etc.) or status (e.g., active, deferred vested, retired etc.) of employees they represented.*

### **Background:**

*Refer to the previous application for a Guarantee Fund declaration and the Commission's declaration that the Guarantee Fund applies to the plan.*

*Refer to any interim allocation from the Guarantee Fund that has been approved by the Commission.*

*Describe any other developments since the Guarantee Fund declaration was issued that are relevant to this application.*

### Subsections 34(5),(6) & (7) of the Regulations:

*Provide information supporting the claim against the Guarantee Fund. Include reference to the attachments or tabs at which extracts of the wind-up report and/or supplement to the wind-up report and a copy of the Commission's declaration can be found.*

	As of (effective date of wind up)	As of (current date)
<b><u>Assets:</u></b>		
Ontario Assets	\$0.00	\$0.00
plus:		
Interim Guarantee Fund allocation, if applicable*	\$0.00	\$0.00
less:		
Provision for expenses	\$0.00	\$0.00
	<hr/>	<hr/>
<b>Ontario assets available for benefits (including interim allocation, if any)</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b><u>Liabilities:</u></b>		
Liabilities for included benefits**	\$0.00	\$0.00
Plus:		
Provision for adverse deviations	\$0.00	\$0.00
	<hr/>	<hr/>
<b>Total</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Net estimated claim against Guarantee Fund***</b>	<b>\$0.00</b>	<b>\$0.00</b>

\* an interim allocation may be granted by the Commission under certain circumstances (for example, to enable continued payment of benefits to retired former members)

\*\* benefits provided under subsection 34(5) of the Regulations that remain to be paid

\*\*\* Liabilities for included benefits plus provision for adverse deviations less Ontario assets available for benefits

*Where there has been a significant change in the estimated amount of claim against the Guarantee Fund since the effective date of wind up, provide a reconciliation of claim amounts identifying the significant factors contributing to the change.*

### **Attachments:**

*The applicant should provide an index of all attachments to the application. Where an application is a bound application, the relevant tabs should be listed.*

## APPENDIX B

### A Technical Guide to Guarantee Fund Calculations

This Appendix outlines the key provisions of the Act and Regulations related to the determination of the benefits guaranteed by the Guarantee Fund and the benefits provided when the Guarantee Fund is declared by the Commission to apply to a pension plan. For complete information, readers should refer to the relevant sections of the Act and Regulations.

Benefits and amounts that are not in respect of employment in Ontario are not guaranteed by the Guarantee Fund. Accordingly, the benefits and amounts described throughout this Appendix relate only to employment in Ontario.

#### **B.1 Benefits and Other Amounts Guaranteed by the Guarantee Fund**

Section 84 of the Act identifies the benefits and other amounts that are guaranteed by the Guarantee Fund if the Guarantee Fund is declared to apply, subject to section 85 of the Act and subsection 47(2) of the Regulations which set out the benefits that are not guaranteed by the Guaranteed Fund. Note that part or all of the benefits excluded under section 85 may be payable pursuant to subsections 34(5) and (6) of the Regulations (see B.5 below).

##### B.1.1 Act - section 84

For a deferred vested former member whose employment or membership was terminated before January 1, 1988, the deferred pension to which the former member is entitled is guaranteed only if the former member, at the date of termination of employment, (i) was at least 45 years of age and (ii) had at least 10 years of continuous employment, or was a member of the pension plan for a continuous period of at least 10 years.

For a member or deferred vested former member whose employment was terminated on or after January 1, 1988, the benefit to which the member or deferred vested former member is entitled under section 36 of the Act (45 & 10 vesting in respect of pre-1987 benefits) or section 37 of the Act (2 years vesting in respect of post-1986 benefits) is guaranteed up to a percentage in accordance with clause 84(1)3. The percentage is determined based on the age and years of employment or membership of a member at the

date of wind up, or of a deferred vested former member at the former member's date of termination. For this determination, one-twelfth credit should be given for each full month of age and for each full month of continuous employment or membership. The membership or employment includes the period of notice of termination of employment required under Part XIV of the *Employment Standards Act*.

Any pension benefit payable to a retired former member, surviving spouse or beneficiary is guaranteed except as noted in B.1.2 below.

Guaranteed benefits include any benefits or options provided under section 74 of the Act (i.e., provision for grow in).

##### B.1.2 Act - section 85 and Reg.- subsection 47(2)

Among the benefits that are not guaranteed, the following should be particularly noted:

- any pension or pension benefit under a pension plan that has been established or maintained for less than three years at the date of wind up;
- any increase to a pension or pension benefit, or the value of a pension or pension benefit, that became effective within three years before the date of wind up;
- the amount of any pension or pension benefit, including any bridging supplement, in excess of \$1,000 per month;
- the pension benefits and ancillary benefits listed under subsection 47(2) of the Regulations.

#### **B.2 Guaranteed Benefit Liability**

Subsection 34(4) of the Regulations defines the Guaranteed Benefit liability as the total liability of the plan for benefits guaranteed by the Guarantee Fund and other amounts guaranteed by the Guarantee Fund. This liability excludes the amount by which the contributions made by any member or former member, plus interest, exceed the liability for the member's or former member's guaranteed benefits and other amounts. Also, it excludes the value attributable to the minimum 50% cost rule for post-1986 contributory benefits.



In determining the Guaranteed Benefit liability in respect of a member or former member, the member or former member should be assumed to commence benefits at the retirement age at which the pension benefit payable to the member or former member, through the application of the provision in the plan, the Act and the Regulations respecting the wind up of the plan, would have the highest commuted value, unless the member or former member has already elected to commence a pension. In the latter case, the assumed retirement age should be based on the pension commencement age elected by the member or former member.

### B.3 Ontario Wind Up Liability

Subsection 29(10) of the Regulations contains a definition of the Ontario wind up liability. In the case of a pension plan where the employer is making payments in accordance with section 75 of the Act, subclause 29(10)(b)(v) includes the benefits that had not vested at the effective date of wind up under the provisions of the plan and that have not been included under subclauses 29(10)(b)(i), (ii), (iii) or (iv) (the “non-vested benefits”). If there is no employer making the referenced payments, such as in an insolvency situation, the condition for the inclusion of non-vested benefits in the Ontario wind up liability has not been met, and, as a consequence, the non-vested benefits are not included in the calculation.

It should be noted that clause 29(10)(b) provides for the exclusion of the liability for any benefit under a qualifying annuity contract (see the definition in subsection 1(2) of the Regulations) from the calculation of Ontario wind up liability. To be consistent, such a contract should also be excluded from the calculation of Guaranteed Benefit liability and Ontario assets.

In order to calculate the Ontario wind up liability, it is not necessary to compute each of the components described in clause 29(10)(b). A more direct method is to calculate it as the liability for the member’s or former member’s pension benefits accrued at the effective date of wind up, including the value of, as applicable:

- deemed consent benefits under subsection 40(3) of the Act;
- benefits under section 74 of the Act;

- minimum value of employee contributions for pre-1987 benefits under subsections 39(1),(2) of the Act;
- minimum 50% cost rule for post-1986 contributory benefits under subsections 39(3),(4) of the Act

but excluding the value of:

- non-vested benefits;
- benefits under a qualifying annuity contract.

The special benefits listed under subsection 47(2) of the Regulations are included in the manner as described in subsection 4.5 of procedure W100-101. Since additional voluntary contributions, if any, are excluded from the determination of Ontario assets, they should also be excluded from the calculation of Ontario wind up liability.

### B.4 Modified Ontario Wind Up Liability

Subsection 34(3) of the Regulations defines the modified Ontario wind up liability as the Ontario wind up liability excluding any liability for benefits described in subsection 47(2) of the Regulations.

### B.5 Benefits to be Provided When Guarantee Fund is Declared to Apply

Subsections 34(5) and (6) of the Regulations prescribe the benefits provided to each member and former member entitled on wind up to payment of benefits guaranteed by the Guarantee Fund, if the Guarantee Fund is declared by the Commission to apply (i.e., the included benefits).

If the Ontario assets at the wind-up date (after deduction of any provision for expenses at that date) are less than the modified Ontario wind up liability at the wind-up date, the included benefits are the sum of:

- the benefits and other amounts included in the calculation of the Guaranteed Benefit liability, and
- the amount of benefits included in the calculation of the modified Ontario wind up liability but not included in the calculation of the Guaranteed Benefit liability, multiplied by

a ratio, not to be less than zero or greater than 1.0, determined in accordance with subclause 34(6)1. (i.e., the ratio of the Ontario assets to the modified Ontario wind up liability).

If the Ontario assets at the wind-up date (after deduction of any provision for expenses at that date) are equal to or greater than the modified Ontario wind up liability at the wind-up date, the included benefits are the sum of:

- the benefits included in the calculation of the modified Ontario wind up liability, and
- the total of the benefits referred to in subsection 47(2) of the Regulations, multiplied by a ratio, not to be less than zero or greater than 1.0, determined in accordance with clause 34(6)2. (i.e., the ratio of the amount by which the Ontario assets exceed the modified Ontario wind up liability to the amount by which the Ontario wind up liability exceeds the modified Ontario wind up liability).

Note that in calculating the ratio referred to above, the Ontario assets at the wind-up date should first be reduced by any provision for expenses before they are compared to the liabilities at that date. The Ontario or modified Ontario wind up liability at the wind-up date should be determined without regard to any plan experience or changes in annuity purchase rates subsequent to the wind-up date and without regard to any provision for adverse deviations in respect of plan experience or changes in annuity purchase rates after the wind-up date (see subsections 2.1.1 and 3.2 of this procedure).

The value of benefits payable to each member or former member must not be less than the person's required contributions plus interest.

## B.6 Examples

For the purpose of illustrating the Guarantee Fund calculations, the following plan scenario has been assumed:

- The plan was wound up effective January 1, 1995;
- The plan vesting rule in a non-wind-up situation was 100% after 10 years of continuous employment for pre-1987 benefits and 100% after 2 years of membership for post-1986 benefits;
- None of the benefits described in subsection 47(2) of the Regulations were provided under the plan;
- The ratio pursuant to subsection 34(6) of the Regulations was 70%. (Please note that the ratio would not, in practice, be determined until after the Ontario wind up liability for the entire plan has been calculated.)

Calculations shown below are for individual members or former members.

### Example A

Plan type	Non-contributory
Status of member	Active
Age at wind up	30 years
Continuous employment*	9 years
Membership*	9 years

\* includes notice period under *Employment Standards Act*

	Employee Contributions with Interest	Monthly Benefit	Present Value of Benefit
Pre-1987	\$0	\$30	\$311
Post-1986	\$0	\$240	\$2,485
<b>Total</b>	<b>\$0</b>	<b>\$270</b>	<b>\$2,796</b>

#### a) Vested status

In respect of pre-1987 benefits, the member is not vested under the statutory “45&10” vesting rule nor the 10 year vesting rule under the plan.

In respect of post-1986 benefits, the member is vested under the statutory “2 year membership” vesting rule.

#### b) Guaranteed benefits

Since the member’s age plus employment is less than 50, none of the benefits are guaranteed under section 84 of the Act.

#### c) Ontario wind up liability

The Ontario wind up liability is equal to the present value of post-1986 benefits of \$2,485. The component in subclause 29(10)(b)(v) of the Regulations, i.e., the liability for pre-1987 benefits in this example, is not included because the employer is insolvent and cannot make payments pursuant to section 75 of the Act.

#### d) Included benefits under subsection 34(5)

	Monthly Benefit	Commuted Value
Subclause 34(5)(a)(i)	\$0	\$0
Subclause 34(5)(a)(ii)	$70\% * (\$240 - \$0)$ = \$168	$70\% * (\$2,485 - \$0)$ = \$1,739
<b>Total</b>	<b>\$168</b>	<b>\$1,739</b>



### Example B

Plan type	Non-contributory
Status of member	Active
Age at wind up	40 years
Continuous employment*	15 years
Membership*	14 years

\* includes notice period under *Employment Standards Act*

	Employee Contributions with Interest	Monthly Benefit	Present Value of Benefit
Pre-1987	\$0	\$180	\$2,464
Post-1986	\$0	\$240	\$3,285
<b>Total</b>	<b>\$0</b>	<b>\$420</b>	<b>\$5,749</b>

#### a) Vested status

In respect of pre-1987 benefits, the member is not vested under the statutory "45&10" vesting rule but is vested under the 10 year vesting rule under the plan.

In respect of post-1986 benefits, the member is vested under the statutory "2 year membership" vesting rule.

#### b) Guaranteed benefits

The pre-1987 benefits are not guaranteed under section 84 of the Act. The post-1986 benefits are partially guaranteed under clause 84(1)3 of the Act as follows:

Age plus employment or membership (whichever is greater)	$40 + 15 = 55$
Portion guaranteed by formula under clause 84(1)3	$20\% + (2/3\% \times 60) = 60\%$
Guaranteed benefits	$60\% \times \$240 = \$144$
Present value of guaranteed benefits	$60\% \times \$3,285 = \$1,971$

#### c) Ontario wind up liability

The Ontario wind up liability is equal to the present value of vested benefits, i.e., \$5,749.

#### d) Included benefits under subsection 34(5)

	Monthly Benefit	Commuted Value
Subclause 34(5)(a)(i)	\$144	\$1,971
Subclause 34(5)(a)(ii)	$70\% \times (\$420 - \$144) = \$193.20$	$70\% \times (\$5,749 - \$1,971) = \$2,644$
<b>Total</b>	<b>\$337.20</b>	<b>\$4,615</b>

### Example C

Plan type	Contributory
Status of member	Active
Age at wind up	40 years
Continuous employment*	15 years
Membership*	14 years

\* includes notice period under *Employment Standards Act*

	Employee Contributions with Interest	Monthly Benefit	Present Value of Benefit
Pre-1987	\$3,100	\$180	\$2,464
Post-1986	\$4,200	\$240	\$3,285
<b>Total</b>	<b>\$7,300</b>	<b>\$420</b>	<b>\$5,749</b>

- a) Vested status  
See comments in Example B.
- b) Guaranteed benefits  
See comments in Example B.
- c) Ontario wind up liability

The Ontario wind up liability is calculated as follows:

Present value of vested benefits	\$5,749
Minimum value of employee contributions for pre-1987 benefits (i.e., \$3,100 - \$2,464)	636
Minimum 50% cost rule for post-1986 benefits (i.e., \$4,200 - 50% * \$3,285)	<u>2,557</u>
<b>Total</b>	<b>\$8,942</b>

- d) Included benefits under subsection 34(5)

	Monthly Benefit	Commuted Value
Subclause 34(5)(a)(i)	\$144	\$1,971
Subclause 34(5)(a)(ii)	70% * (\$420 - \$144) = \$193.20	70% * (\$8,942 - \$1,971) = \$4,880
<b>Total</b>	<b>\$337.20</b>	<b>\$6,851 (1)</b>
Subclause 34(5)(b)	(3)	\$7,300 (2)

- (3) The commuted value of the included benefits is the greater of (1) and (2), i.e., \$7,300. The amount of monthly pension benefits payable to the member is that which could be provided by the commuted value of \$7,300.

### Example D

Plan type	Non-contributory
Status of member	Active
Age at wind up	46 years
Continuous employment*	19 years
Membership*	18 years

\* includes notice period under *Employment Standards Act*

	Employee Contributions with Interest	Monthly Benefit	Present Value of Benefit
Pre-1987	\$0	\$300	\$7,610
Post-1986	\$0	\$240	\$6,088
<b>Total</b>	<b>\$0</b>	<b>\$540</b>	<b>\$13,698</b>

In this example, it is assumed the plan was amended within three years before the date of wind up, effective January 1, 1993. The member's accrued benefits based on the plan prior to the amendment are \$504 per month and the associated present value is \$12,784.

#### a) Vested status

The member is vested under the statutory vesting rules for both pre-1987 and post-1986 benefits.

#### b) Guaranteed benefits

The member's age plus employment exceeds 60 points. All benefits except those attributable to the January 1, 1993 amendment ("3 year exclusion" under section 85 of the Act) are guaranteed under section 84 of the Act. The guaranteed benefits and the associated present value are \$504 per month and \$12,784, respectively.

#### c) Ontario wind up liability

The Ontario wind up liability is equal to the present value of vested benefits, i.e., \$13,698.

#### d) Included benefits under subsection 34(5)

	Monthly Benefit	Commuted Value
Subclause 34(5)(a)(i)	\$504	\$12,784
Subclause 34(5)(a)(ii)	$70\% * (\$540 - \$504)$ = \$25.20	$70\% * (\$13,698 - \$12,784)$ = \$640
<b>Total</b>	<b>\$529.20</b>	<b>\$13,424</b>



### Example E

Plan type	Non-contributory
Status of former member	Deferred vested
Date of termination	December 31, 1980
Age at termination	41 years
Continuous employment at termination	10 years
Membership at termination	10 years
Age at wind up	55 years

	Employee Contributions with Interest	Monthly Benefit	Present Value of Benefit
Pre-1987	\$0	\$150	\$5,940
Post-1986	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$150</b>	<b>\$5,940</b>

#### a) Vested status

The former member was not vested under the statutory "45&10" vesting rule but was vested under the plan vesting rule.

#### b) Guaranteed benefits

Since the former member terminated before January 1, 1988 and he was not "45&10" at the date of termination, his deferred pension is not guaranteed under section 84 of the Act.

#### c) Ontario wind up liability

The Ontario wind up liability is equal to the present value of deferred pension, i.e., \$5,940.

#### d) Included benefits under subsection 34(5)

	Monthly Benefit	Commuted Value
Subclause 34(5)(a)(i)	\$0	\$0
Subclause 34(5)(a)(ii)	$70\% * (\$150 - \$0)$ = \$105	$70\% * (\$5,940 - \$0)$ = \$4,158
<b>Total</b>	<b>\$105</b>	<b>\$4,158</b>

SECTION	Procedures - Hearings
INDEX NO.	P500-760
TITLE	Rules of Practice for Proceedings Under Section 89 of the Act: General, Pre-Hearing Conferences, Settlement Conferences, Disclosure, Written Hearings, Electronic Hearings
APPROVED BY	The Pension Commission of Ontario
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#### Schedule A

Request for Hearing under Section 89 of the PBA

## **Rule 1 - General**

### **Application of Rules**

- 1.1 (1) These rules apply to all proceedings of the Pension Commission of Ontario under s. 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 ("Act").
- (2) These rules are made under the *Statutory Powers Procedure Act* ("SPPA") and are subject thereto.

### **Definitions**

- 1.2 In these rules, unless the context requires otherwise:

"Commission" means a quorum of the Commission under the Act or the SPPA as the context requires;

"document" includes a sound recording, videotape, file, photograph, chart, graph, map, plan, survey, book of account, and information recorded or stored by means of any device;

"hearing" means a hearing in a proceeding under s. 89 of the Act;

"holiday" means;

- (a) any Saturday or Sunday,
- (b) New Year's Day,
- (c) Good Friday,
- (d) Easter Monday,
- (e) Victoria Day,
- (f) Canada Day,
- (g) Civic Holiday,
- (h) Labour Day,
- (i) Thanksgiving Day,
- (j) Remembrance Day,
- (k) Christmas Day,
- (l) Boxing Day, and
- (m) any special holiday proclaimed by the Governor General or the Lieutenant Governor,

and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and

where Christmas Day falls on a Friday, the following Monday is a holiday;

"party requesting the hearing" means the party requesting the hearing under s. 89 of the Act;

"person presiding at the pre-hearing conference" means a member of the Commission or other person designated by the Chair to conduct a pre-hearing conference;

"Registrar" means the Registrar of the Commission; and

"witness statement" means a statement signed by the witness or for any witness where such statement does not exist, a statement of the evidence that the witness is expected to give at the hearing.

### **General**

- 1.3 The Commission may exercise any of its powers under these rules on its own initiative or at the request of a party.
- 1.4 The Commission may issue procedural directions relating generally to proceedings at any time, including before or during any proceeding.
- 1.5 The Commission may waive or vary any of these rules in respect of a proceeding if it is of the opinion that it would be advisable to do so to secure the just and expeditious determination of the real matters in issue.
- 1.6 These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding before the Commission on its merits.
- 1.7 No proceeding or step, document or order in a proceeding is invalid by reason only of a defect or other irregularity in form.

### **Request for Hearing**

- 1.8 Where a person requests a hearing by the Commission under s. 89 of the Act, the person shall complete and file with the Commission a document in the form of Schedule A attached to these rules.



## Notice of Oral Hearing

- 1.9 (1) Unless the Commission directs otherwise, the Registrar shall give written notice of an oral hearing to the parties and to others as the Commission considers necessary.
- (2) Written notice of an oral hearing shall include:
- (a) a reference to the statutory authority under which the hearing is to be held;
  - (b) the date, time, place and purpose of the hearing;
  - (c) a statement that where a person is properly served with notice of a hearing and does not attend at the time and place appointed, the Commission may proceed in that person's absence and without further notice to that person;
  - (d) a statement that the hearing will be open to the public unless the Commission directs otherwise; and
  - (e) any other information the Commission considers advisable.
- (3) The Commission may direct one or more of the parties to give notice of an oral hearing in a form and manner approved by the Commission.
- (4) Where a pre-hearing conference has been conducted in a proceeding and all parties were made aware of the hearing date at the pre-hearing conference, the Commission may direct the Registrar not to give written notice of an oral hearing.

## Service and Filing

- 1.10(1) "Service" means the effective delivery of documentation to any person or to the person's counsel or agent.
- (2) Service is deemed to be effective when delivered to the person's last known address:
- (a) by first class mail on the seventh day after the day of mailing;
  - (b) by fax on the same day as the transmission;
  - (c) by courier, including Priority Post, on the second full day after the document was given to the courier by the party serving; or

(d) where service is effected in another manner as directed by the Commission.

- (3) Documents delivered after 4 p.m. shall be deemed to have been served on the next day that is not a holiday.
- (4) Documents may be filed with the Commission by personal delivery of the documents to the offices of the Commission or by any of the methods of delivery set out in sub-rule 1.10(2).
- (5) Documents filed by fax shall be filed by 4 p.m. and shall not exceed 10 pages, inclusive of cover sheet, except with leave of the Commission.
- (6) The Commission may direct that a sworn statement be filed indicating who has been served, the manner of service and what documents have been served.
- (7) A person who serves or files a document shall include with it a statement of the person's address, telephone number and the name of the proceeding to which the document relates.

## Motions

- 1.11 (1) Where a party intends to bring a motion prior to or at the commencement of the hearing, the party shall serve on all other parties and file with the Commission written notice of the motion.
- (2) Written notice of motion shall set out:
- (a) the date the party seeks to have the motion heard;
  - (b) the grounds for the motion, in detail;
  - (c) the evidence to be relied upon; and
  - (d) the relief sought.
- (3) Written notice of motion shall be served and filed at least 14 days before the date on which the party seeks to have the motion heard.
- (4) Where written notice of motion is served and filed, the Commission, after reviewing the written notice of motion, may:

- (a) set a date for the hearing of the motion;
  - (b) direct that the motion be heard during a pre-hearing conference; or
  - (c) direct that the motion be heard at the hearing.
- (5) The Commission may require the parties to make written submissions in advance of the hearing of a motion.
- (6) Where, after the commencement of a hearing, a party intends to bring a motion, the party shall provide such notice to the parties and the Commission as is reasonable in the circumstances.

### Notice of Constitutional Question

- 1.12(1) Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law, or where a party claims a remedy under sub-section 24(1) of the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be served on the other parties and the Commission as soon as the circumstances requiring notice become known and, in any event, at least 15 days before the question is to be argued.
- (2) Where the Attorneys General of Canada or Ontario intervene, they are entitled to adduce evidence and make submissions to the Commission regarding the constitutional question.

### Time

- 1.13(1) In the computation of time under these rules or an order, except where a contrary intention appears:
- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens;
  - (b) where a period of less than seven days is prescribed, holidays shall not be counted; and
  - (c) where the time for doing an act under these rules expires on a holiday, the act may be done on the next day that is not a holiday.

- (2) The Commission may, before or after expiration of a time period prescribed by these rules and on such terms as it considers advisable, extend or abridge the time prescribed for the performance of any obligation under these rules.

### Current Information

- 1.14 A party, or where a party is represented by counsel or agent, the counsel or agent, shall file with the Commission and keep current during the proceeding the party's address, telephone number and fax number of the party, counsel or agent, as the case may be.

### Change of Counsel or Agent

- 1.15 After commencement of the hearing, a party may change its counsel or agent only with leave of the Commission, which may be on such terms and conditions as the Commission considers just.

### *Sine die* Adjournments

- 1.16 Where the Commission adjourns a proceeding without a fixed date, the Commission shall:
- (a) specify a time period for the adjournment in its adjournment order; and
  - (b) provide in its adjournment order that the proceeding is terminated at the end of the time period, unless within the time period;
    - (i) one of the parties makes a written request to the Commission that the proceeding continue, or
    - (ii) one of the parties obtains an order from the Commission extending the time period.

### Rule 2 - Pre-Hearing Conferences

#### Directing Pre-Hearing Conference

- 2.1 (1) The Commission may direct the parties or their counsel or agent to participate in one or more pre-hearing conferences for the purpose of considering any matter that may assist in the just and most expeditious disposition of the proceeding, including the:

- (a) identification of parties and other interested persons, the scope of their participation at the hearing and notice to such persons;
  - (b) issues relating to disclosure, witness statements, expert witnesses, particulars, examination of parties and the exchange of submissions;
  - (c) identification and simplification of issues;
  - (d) identification of preliminary motions;
  - (e) procedural issues including the dates by which any steps in the proceeding are to be taken or begun, the estimated duration of the hearing and the date that the hearing will begin;
  - (f) identification of facts or evidence that may be agreed upon; and
  - (g) order of proceeding among the parties.
- (2) A pre-hearing conference may be held in person, in writing or electronically.
- (3) Settlement shall not be considered at a pre-hearing conference.
- (4) Where the person presiding at the pre-hearing conference is a Commission member, that Commission member may sit as a member of the panel of the Commission which conducts the hearing.
- (ii) if not, that their counsel or agent must be given authority to make agreements and undertakings on their behalf respecting the matters to be addressed at the pre-hearing conference;
  - (d) a statement that if a person other than a party does not attend at the pre-hearing conference, the proceeding may continue in the absence of that person and the person will not be entitled to any further notice in the proceeding;
  - (e) a statement that orders which will be binding on all parties with respect to the proceeding may be made at the pre-hearing conference; and
  - (f) a statement that if a party intends to call expert evidence at a hearing the party must comply with sub-rule 4.4(1) failing which the party may not call the expert witness without consent of the Commission under sub-rule 4.4(4).

#### **Documents, Pre-Hearing Submissions and Issues**

- 2.3 The Commission may direct the parties to exchange or file by a specified date documents or pre-hearing submissions and may prescribe the issues to be addressed at the pre-hearing conference.

#### **Notice**

- 2.2 (1) Where a pre-hearing conference is to be held, the registrar shall give written notice of the pre-hearing conference to the parties and to such persons as the Commission directs.
- (2) The notice of a pre-hearing conference shall include:
- (a) the date, time, place and purpose of the pre-hearing conference;
  - (b) whether parties are required to exchange or file documents or pre-hearing submissions as prescribed by sub-rule 2.3 and, if so, the issues to be addressed and the date when they are required;
  - (c) whether parties are required to attend in person, and
    - (i) if so, that they may be represented by counsel or agent; or

#### **Orders, Agreements, Undertakings**

- 2.4 (1) Orders, agreements and undertakings made at a pre-hearing conference shall be recorded in a memorandum ("pre-hearing conference memorandum") prepared by or under the direction of the person presiding at the pre-hearing conference.
- (2) Copies of a pre-hearing conference memorandum shall be provided to the parties and to the Commission and to such other persons as the person presiding at the pre-hearing conference directs.
- (3) The orders, agreements and undertakings in a pre-hearing conference memorandum shall govern the conduct of the proceeding and are binding upon the parties to the proceeding unless otherwise ordered by the Commission.



## **Matters not addressed at Pre-Hearing Conference**

2.5 (1) Where a pre-hearing conference is held in a proceeding, a party may not raise any matter, issue, or motion at the hearing which was not raised at the pre-hearing conference without the consent of the Commission.

(2) The consent of the Commission may be on such terms and conditions as the Commission considers just.

## **Accessible to Public**

2.6 A pre-hearing conference shall be open to the public unless the person presiding at the pre-hearing conference directs that it be held in the absence of the public.

## **Rule 3 - Settlement Conferences**

### **Direction to Attend Regarding Settlement**

3.1 (1) At any time prior to the commencement of the hearing, the Commission may direct the parties or their counsel or agent to participate in one or more conferences for the purpose of considering settlement of any or all of the issues ("settlement conference").

(2) A settlement conference may be held in person, in writing or electronically.

### **Notice of Settlement Conference**

3.2 Where the Commission directs that a settlement conference be held, the Registrar shall give notice as the Commission directs.

- (1) Where a settlement conference is held:
- (a) the person conducting the settlement conference may meet with each party separately to encourage settlement;
  - (b) statements made without prejudice at the settlement conference may not be communicated to the panel of the Commission which conducts the hearing;
  - (c) where the person presiding at the settlement conference is a Commission member, that Commission member may not sit as a member of the panel of the Commission which conducts the hearing unless all parties consent; and

(d) an agreement to settle any or all of the issues binds the parties to the agreement but is subject to approval by the Commission.

## **Not Accessible to Public**

3.3 A settlement conference shall be held in the absence of the public.

## **Rule 4 - Disclosure**

### **PARTICULARS**

#### **Order for Particulars**

4.1 (1) At any time in a proceeding, the Commission may order any party to provide to it or to any other party such particulars as are necessary for a satisfactory understanding of the issues in the proceeding.

#### **Content of Particulars**

- (2) Particulars shall include:
- (a) the remedy or order requested;
  - (b) the grounds upon which the remedy or order is sought; and
  - (c) a general statement of the material facts.

#### **Particulars Not Binding on Commission**

(3) Particulars provided by any party do not limit the jurisdiction of the Commission under subsection 89(9) of the Act.

#### **Amendment of Particulars**

(4) At any time in a proceeding the Commission may order that particulars be amended.

## **DISCLOSURE OF DOCUMENTS OR THINGS**

### **Requirement to Disclose**

4.2 (1) Each party to a hearing shall make disclosure to all other parties of all of the evidence that the party intends to produce or enter as evidence at the hearing including the delivery to every other party of copies of all documentary evidence:

- (a) by the date specified for that purpose by the Commission or the person presiding at the pre-hearing conference, or
- (b) where no date for the delivery of such documents is specified by the Commission or the person presiding at the pre-hearing conference, at least 14 days before the hearing is scheduled to commence.

- (b) where no date for the delivery of such particulars is specified by the Commission or the person presiding at the pre-hearing conference, at least 14 days before hearing is scheduled to commence.

#### Disclosure by Superintendent

- 2) The Superintendent shall make available for inspection by every other party all documents and things which are in his possession or control, other than privileged information and those documents referred to in sub-rule 4.2(1), that are relevant to the hearing and, at the party's expense, provide copies or permit the inspecting party to make copies of the documents:
  - (a) by the date specified for that purpose by the Commission or the person presiding at the pre-hearing conference, or
  - (b) where no date for the delivery of such documents or things is specified by the Commission or the person presiding at the pre-hearing conference, at least 14 days before the hearing is scheduled to commence.

#### Failure to Disclose Document or Thing

- (3) A party who fails to make disclosure of a document or thing in compliance with sub-rule 4.2(1) may not refer to the document or thing or introduce it in evidence at the hearing without leave of the Commission, which may be on such terms and conditions as the Commission considers just.

#### Disclosure where Section 8 of the *SPPA* Applies

- (4) If the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party making the allegations shall provide to all other parties particulars of the allegations:
  - (a) by the date specified for that purpose by the Commission or the person presiding at the pre-hearing conference, or

#### Order for Disclosure

- (5) The Commission may order a party to disclose in advance of the hearing any document or thing, other than privileged information, which is:
  - (a) identified by the party requesting the order with reasonable specificity, and
  - (b) relevant to the subject matter of the proceeding which may be admissible at the hearing.

#### WITNESS STATEMENTS

##### Witness Statement to be Provided

- 4.3 (1) A party shall provide to the other parties a witness statement for each witness it intends to call at the hearing:
  - (a) by the date specified for that purpose by the Commission or the person presiding at the pre-hearing conference, or
  - (b) where no date for the delivery of such statement is specified by the Commission or the person presiding at the pre-hearing conference, at least 14 days before the commencement of the hearing.

##### Content of Witness Statement

- (2) A witness statement shall contain;
  - (a) the substance of the evidence of the witness;
  - (b) a list of documents, if any, that the witness will refer to; and
  - (c) the witness's name and address or, if the witness's address is not provided, the name of a person through whom the witness can be contacted.

### Failure to Provide Witness Statement

- (3) If a party fails to provide a witness statement in accordance with the provisions of sub-rules 4.3(1) and 4.3(2) the party may not call the person as a witness without the consent of the Commission which may be on such terms and conditions as the Commission considers just.

### Incomplete Witness Statement

- (4) A party may not call a witness to testify to matters not disclosed in the witness statement without the consent of the Commission which may be on such terms and conditions as the Commission considers just.

### Witness at Hearing

- (5) A party that provides a witness statement to the other parties in accordance with this rule is not obligated to call the witness to whom the witness statement relates at the hearing.

## EXPERT WITNESSES

### List of Issues at Pre-Hearing Conference

- 4.4 (1) Where a pre-hearing conference is conducted in a proceeding, a party that intends to call an expert witness at the hearing shall furnish to the other parties at least two days prior to the pre-hearing conference the name and area of expertise of the expert and a list of the issues on which the expert is expected to testify.

### Report of Expert Witness

- (2) A party that intends to call an expert witness at a hearing shall provide to every other party a written report signed by the expert containing the name, address and qualifications of the expert and the substance of the expert's proposed evidence including a list of all the documents to which the expert will refer:
  - (a) by the date specified for that purpose by the Commission or the person presiding at the pre-hearing conference, or

- (b) where no date for the delivery of such report is specified by the Commission or the person presiding at the pre-hearing conference, at least 14 days before the hearing is scheduled to commence.

### Failure to Comply

- (3) If a party fails to comply with the provisions of sub-rules 4.4(1) and 4.4(2) the party may not call the expert witness without the consent of the Commission which may be on such terms and conditions as the Commission considers just.

### Expert Evidence at Hearing

- (4) Where the Commission allows into evidence a report from an expert, the Commission may reasonably limit examination or cross-examination of the expert where the Commission is satisfied that the report from the expert or the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

## Rule 5 - Written Hearings

### Application

- 5.1 The rules in respect of written hearings do not apply to the admissibility, at an oral hearing, of written evidence admissible under section 15 of the *SPPA* or to the conduct of written pre-hearing conferences.

### When to Hold a Written Hearing

- 5.2 (1) The Commission may conduct, at any time, a proceeding or part of a proceeding by means of a written hearing, unless a party objects.
- (2) In deciding whether to hold a written hearing, the Commission may take into account any factors it considers relevant, which may include:
  - (a) the suitability of a written hearing format considering the subject matter of the hearing, including the extent to which the facts are in dispute;



- (b) whether the nature of the evidence is appropriate for a written hearing, including whether credibility is an issue and the extent to which the facts are in dispute;
  - (c) the extent to which the matters in dispute are questions of law;
  - (d) the convenience of the parties;
  - (e) the cost, efficiency and timeliness of proceedings;
  - (f) avoidance of unnecessary length or delay;
  - (g) ensuring a fair and understandable process;
  - (h) the desirability or necessity of public participation or public access to the Commission's process;
  - (i) any other consideration affecting the fulfilment of the Commission's statutory mandate.
- (3) The Commission may continue a written hearing as an oral or electronic hearing.
- (4) If the Commission decides to convert a written hearing into an oral or electronic hearing format, it shall notify the parties of its decision and may make directions as to the holding of the hearing and the procedures set down in these rules for such a hearing will apply.
- (5) The Commission may continue an oral hearing as a written hearing with the consent of the parties.

### Notice of Written Hearing

- 5.3 (1) The Commission shall provide a notice of written hearing which shall include:
- (a) a reference to the statutory authority under which hearing is to be held;
  - (b) a statement of the purpose of the hearing;
  - (c) a statement that the hearing will be conducted in accordance with these rules;
  - (d) a statement that:
    - (i) a party may object to the hearing being held as a written hearing by filing an objection with the Commission within 7 days after receiving the notice of the written hearing; and
    - (ii) where a party objects to the hearing being held in writing, the Commission will hold an oral or electronic hearing and the Commission may supply directions as to the holding of that hearing;
  - (e) a statement that if a party does not participate in accordance with the notice, nor object, then the Commission may proceed without the party's participation and the party will not be entitled to any further notice of the proceeding;
  - (f) a statement of the number of copies of documents the parties are to file in the written hearing; and
  - (g) any other information the Commission considers advisable.

### Objections to Written Hearings

- 5.4 (1) A party may file and serve an objection to the hearing being held as a written hearing within 7 days after receiving notice of the written hearing.
- (2) If a party objects to a written hearing, the Commission shall notify the parties of the objection and provide a notice of oral or electronic hearing.

### Submissions and Supporting Documents

- 5.5 (1) The party requesting the hearing shall, within 21 days after receiving notice of the written hearing, file and serve on all other parties its written submissions setting out,
- (a) the grounds upon which the request for the remedy or order is made;
  - (b) a statement of the facts relied on in support of the remedy or order requested;
  - (c) the evidence relied on in support of the remedy or order requested; and
  - (d) any law relied on in support of the remedy or order requested.
- (2) The Commission may require the party requesting the hearing to file and serve further information in addition to its written submissions.

## Response

- 5.6 (1) If a party wishes to respond, the party shall do so by filing and serving on every other party a written response within 14 days after the applicant's submissions and supporting documents are served on the party.
- (2) The response must set out the party's submissions relating to the matter before the Commission and be accompanied by a statement of the facts and any evidence and any law relied on in support of the response.

## Reply

- 5.7 (1) The party requesting the hearing may reply to a response by filing and serving on every other party a written reply within 7 days after a response from a party is served on the applicant.
- (2) The reply must set out the position of the party requesting the hearing to the response and be accompanied by any additional facts, evidence and law that the applicant relies on in support of the reply.

## Questions and Answers

- 5.8 (1) If a written hearing involves evidentiary issues, the Commission may direct that,
- (a) the party requesting the hearing and any responding party may ask such questions of the other as are reasonably necessary for the purpose of clarification of the other's evidence by filing and serving on every other party written questions within such time as is directed by the Commission; and
  - (b) the party to whom the questions are directed shall file and serve on every other party, written answers to such questions within such time as is directed by the Commission.

## Evidence

- 5.9 (1) The evidence shall be in writing or, when electronic transmission is permitted, it shall be in the form directed by the Commission.

- (2) The evidence shall identify the person giving the evidence and shall either be in certified form or in affidavit form.
- (3) Evidence shall include all documents and things a party is relying on to support the remedy or order requested.

## Oral Examination

- 5.10(1) There shall be no oral examination unless ordered by the Commission.
- (2) If a party requests, the Commission may order that a party present a witness to be examined or cross-examined upon such conditions as the Commission directs.

## Hearing in the Absence of a Party

- 5.11 If a party does not object or participate the Commission may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding.

## Rule 6 - Electronic Hearings

### Application

- 6.1 The rules in respect of electronic hearings do not apply to the admissibility, at an oral hearing, of electronic evidence admissible under section 15 of the *SPPA* or to the conduct of electronic pre-hearing conferences.

### When to Hold an Electronic Hearing

- 6.2 (1) The Commission may conduct, at any time, a proceeding or part of a proceeding by means of an electronic hearing, unless a party objects.
- (2) In deciding whether to hold an electronic hearing, the Commission may take into account any factors it considers relevant, which may include:
- (a) the suitability of the electronic technology for the subject matter of the hearing;
  - (b) whether the nature of the evidence is appropriate for an electronic hearing, including whether credibility is in issue and the extent to which facts are in dispute;
  - (c) the extent to which the matters in dispute are questions of law;

- (d) the convenience of the parties;
  - (e) the cost, efficiency and timeliness of proceedings;
  - (f) avoidance of unnecessary length or delay;
  - (g) ensuring a fair and understandable process;
  - (h) the desirability or necessity of public participating or public access to the Commission's process; and
  - (i) any other consideration affecting the fulfilment of the Commission's statutory mandate.
- (3) The Commission may continue an electronic hearing as an oral hearing whenever the Commission deems it appropriate or as a written hearing with the consent of the parties.
- (4) If the Commission decides to convert an oral hearing into a written or electronic hearing, it shall notify the parties of its decision and may make directions as to the holding of the hearing and the procedures set down in these rules for such a hearing will apply.
- (5) The Commission may continue an oral hearing as an electronic hearing.

### Notice of Electronic Hearing

- 6.3 (1) Notice of an electronic hearing shall include:
- (a) a reference to the statutory authority under which the hearing is held;
  - (b) a statement of the time and purpose of the hearing and details about the manner in which the hearing will be held;
  - (c) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
  - (d) if clause (c) does not apply, a statement that the party notified may, by satisfying the Commission that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, require the Commission to hold the hearing as an oral hearing, and an indication of the procedure to be followed for that purpose;
  - (e) a statement that if the party notified neither acts under clause (d), if applicable, nor participates in the hearing in accordance with the notice, the Commission may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding; and
  - (f) any other information the Commission considers advisable.

### Objections to Electronic Hearings

- 6.4 A party that objects to the hearing being held as an electronic hearing shall file and serve a written notice of objection within 21 days of receiving notice of the electronic hearing.

### Contents of Notice of Objection

- 6.5 In a notice of objection, the objecting party shall:
- (a) set out its reasons for the objection; and
  - (b) state all facts upon which the party relies and provide in affidavit form the evidence on which the party relies in relation to the objection.

### Procedure When Objection is Made

- 6.6 (1) If the Commission receives an objection, it may:
- (a) accept the objection, cancel the electronic hearing and either schedule an oral hearing or, with consent of the parties, schedule a written hearing;
  - (b) if the Commission is satisfied that this will cause no significant prejudice, reject the objection without inviting responses from the other parties and proceed with the electronic hearing; or
  - (c) provide all other parties with an opportunity to respond to the objection by filing and serving a written response, and, after considering the objection and all responses, proceed with the electronic hearing, schedule an oral hearing, or with consent of the parties, schedule a written hearing.
- (2) For the purposes of clause (1)(c), the Commission shall provide directions for the form and timing of their responses and for the reply, if any, of objecting parties to these responses.

### Terms and Conditions

- 6.7 The Commission may, in an order that a hearing be held electronically, impose terms and conditions including specifying who will make the arrangements for the electronic hearing and requiring that a party requesting an electronic hearing pay all or part of the cost of providing the facilities necessary for the conduct of the electronic hearing.



**Request for Hearing Under PBA - Section 89**

(Schedule A)

Name of Party Requesting Hearing:

Name, Address, Telephone Number  
and Facsimile Number of Counsel  
or Agent, if any:

Name, Address, Telephone Number  
and Facsimile Number of Party  
Requesting Hearing, if Unrepresented  
by Counsel or Agent:

Order Sought:

Grounds for Order:

Other persons who the applicant  
believes may have an interest  
in the matter:

---

Signature of Requesting Party or Authorized Representative

Dated:

Made under Rule 1.8 of the Rules of Practice for Proceedings under Section 89 of the  
*Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (P500-760).

## Your Questions Answered

*This section is based on enquiries from our readers. It must be remembered that, although you may believe that you are in a situation similar to the one described in this section, the answer to any question is subject to the facts of each particular case and the applicable law. Accordingly, the answers to the questions in this section have no legal authority, nor should be construed as legal, actuarial, accounting or other professional advice. You should obtain independent professional advice if you have a particular interest in any of the matters addressed in this section.*

**Q. Do the Act or the Regulations prohibit termination of plan membership with a concurrent right to a refund under section 63 or to portability under section 42 if the member does not also terminate employment?**

A. A member who does not terminate employment will not satisfy the conditions of section 42 or section 63 of the Act unless membership is terminated in accordance with subsection 35(4) or subsections 38(1) and (4) of the Act. Those subsections identify the only circumstances under which a member may voluntarily terminate plan membership without terminating employment.

**Q. May a pension plan be amended to give the members the right to voluntarily terminate membership and receive a refund or exercise portability options, as applicable, without terminating employment?**

A. No. A pension plan would cease to comply with the Act and the Regulations if amended as described. The Superintendent could refuse to register an amendment which entitles a member to terminate membership while continuing employment if such entitlement arises in circumstances other than those referred to or contemplated by subsection 35(4) and subsections 38(1) and (5) of the Act.

**Q. The shortened life expectancy ("SLE") provision found at section 49 of the Act provides that a pension plan may allow for a variation in the terms of payment of a pension or a deferred pension if a mental or physical disability is likely to shorten considerably the life expectancy of a member or former member. Do the Act and the Regulations permit a SLE provision in a contract for an Ontario Locked-in Retirement Account ("LIRA")?**

A. There is no blanket SLE provision under the Act and the Regulations that automatically applies to all Ontario LIRAs. Clause 21(2)(d) of the Regulations provides that the contract for an individual planholder's LIRA may provide for the withdrawal of locked-in money as a payment or series of payments by reason of a SLE situation in only one circumstance. That is, if the registered pension plan from which the locked-in money was originally transferred contains a SLE provision. This means that a SLE provision will not apply to an individual planholder's LIRA unless the financial institution receives confirmation from the pension plan administrator that the terms of the pension plan provide for the variation in payment.

**Q. Who makes the decision to provide a variation in payment when the life expectancy of a LIRA planholder is likely to be shortened considerably due to a mental or physical disability (a shortened life expectancy situation in accordance with section 49 of the Act)?**

A. Verification by a qualified medical practitioner should be submitted to the financial institution. On the basis of that opinion and confirmation that the former pension plan does contain a shortened life expectancy provision, the financial institution should determine whether a variation in payment is appropriate in the circumstances.

Subsection 42(11) of the Act discharges a plan administrator from any further responsibility for administering the pension or deferred pension entitlement of an individual when locked-in money is transferred to a financial institution. Financial institutions that receive locked-in money assume the responsibility for administering a LIRA in accordance with the relevant provisions of the Regulations.

**Q. Section 50 of the Act provides that the terms of a pension plan may permit the payment of the commuted value of an annual pension payable at normal retirement date as a lump sum amount if that pension is less than two (2) per cent of the Year's Maximum Pensionable Earnings in the year of the plan member's termination. Does this provision also apply to a Life Income Fund ("LIF") and a life annuity purchased with money transferred from a LIRA or a LIF.**

A. No. The application of section 50 is limited to the terms of a pension plan. If a pension plan does contain the “small amounts” provision, the decision about whether the value of a benefit entitlement is available as an unlocked lump sum amount will be made by the plan administrator before any money is transferred out of the pension plan. There is no authority under the Act or the Regulations which would permit a financial institution to administer a small amounts provision on the basis of the annualized payout from a LIF or a life annuity purchased with money transferred from a LIRA or a LIF.

**Q. May a continuing pension plan provide for a distribution of surplus to the members and former members in the form of cash if no payment is made to the employer?**

A. A continuing plan may be amended, if permitted by the plan documents, to provide for a distribution of surplus to the members, former members and other persons who are entitled to a payment under the pension plan in the form of cash provided that no payment is being made to the employer. The amendment should identify the amount of surplus to be distributed, and the persons to whom surplus will be paid. The prior consent of the Commission is not required in these circumstances (please see the announcement on page 8 of this issue dealing with refunds of member contributions and deemed AVCs). However, the amendment is required to be registered by the Superintendent.

The main consideration for the Superintendent is whether the pension plan and the fund are being administered prudently. Therefore, the Superintendent must be satisfied that a surplus exists as determined in accordance with section 26 of the Regulations. For certainty, the plan administrator may wish to consider the minimum surplus reserve criteria identified in clauses 79(1)(c), (d) and (e) of the Act which apply where a payment of surplus is made from a continuing plan to an employer.

On a case-by-case basis, the Superintendent may conclude that an amendment is adverse in accordance with subsection 26(1) of the Act. This may occur where surplus is not allocated to all of the members, former members and any other persons who are entitled to receive a payment under the plan, or the method of allocation is not determined on a basis that is consistent for each class of employee.

Please refer to the policy series S900-700 for policies that deal with a surplus distribution from a continuing pension plan where a payment to an employer is contemplated. In such circumstances, an application for the Commission’s consent is required in accordance with section 79 of the Act and section 10 of the Regulations.



## Funding Requirements for Designated Plans in Ontario

O. Reg. 73/95 amending Regulation 909, R.R.O. 1990 (the Pension Benefits Act Regulation, "PBAR") was effective February 23, 1995. Among other things, this regulation was designed to resolve a conflict among the *Pension Benefits Act* ("PBA"), the PBAR, the *Income Tax Act* (Canada) ("ITA (Canada)") and Income Tax Regulations ("ITR") regarding the funding of designated plans and exempt such plans from PBGF protection and the requirement to pay PBGF levies.

This article deals with designated plan funding issues. More specifically, it discusses the interaction of the Ontario funding requirements, professional standards and the maximum funding valuation ("MFV") requirements.

The general principle is that the PBAR and the CIA Standard of Practice for Valuation of Pension Plans effective May 1, 1994 (the "Standard") require that, in the first instance, a valuation must be prepared as if the maximum funding valuation ("MFV") rules did not exist. More specifically, this means that:

- (i) valuations must still be prepared to determine the going concern and solvency contributions required; and
- (ii) normal costs and schedules of special payments must still be established based on these results without regard to the MFV.

The ITR limits the contributions established in accordance with professional standards and the Ontario regulations. The Standard permits the MFV to be performed *in addition to* the above and based on the legislated methods, assumptions etc. as long as this is clearly disclosed. The PBAR provides that an employer required to make contributions under a designated plan shall not be required to make a payment that is not an "eligible contribution".

It should be noted that the MFV rules effectively prescribe a maximum dollar contribution level for **any** designated pension plan, regardless of the specific plan provisions of a particular pension plan (with the exception of the pension benefit accrual rate). For instance, if a plan does not contain any indexing provision, the MFV still permits the prescribed indexing assumption to be used for that plan. For

further information, please contact the Pension Benefits Division of the Office of the Superintendent of Financial Institutions in Ottawa.

### Three Valuations May Be Required

The ITA requirement to fund on the basis of a MFV *does not exempt* the actuary from performing a "regular" funding valuation or a solvency valuation. Section 4(1) of the PBAR requires that:

4. (1) Every pension plan shall set out the obligation of the employer or any person required to make contributions on behalf of an employer, to contribute both in respect of the normal cost and any going concern unfunded actuarial liabilities and solvency deficiencies under the plan. R.R.O. 1990, Reg. 909, subsection 4(1).

In addition, Section 16 of the PBAR requires:

16. (1) An actuary preparing a report under section 3, 5.3, 13 or 14 of this Regulation or section 70 of the Act shall use assumptions appropriate for the plan and methods consistent with sound principles established by precedent or by common usage within the actuarial profession and with the requirements of the Act and this Regulation.
- (2) An actuary preparing a report under section 4 shall use his or her best effort to meet the standards set out in subsection (1).
- (3) The person preparing a report referred to in subsection (1) or (2) shall certify that it meets the requirements of subsection (1) or (2), as the case may be.
- (4) The person preparing a report referred to in subsection (2) shall disclose in the report any respect in which the report does not meet the standards set out in subsection (1) O. Reg. 712/92, section 11.

Subsections 13(1), 14(1) and 17(1) of the PBAR also require that actuarial valuations (going concern and solvency) be prepared on a regular basis.

Taken together, it is clear that an actuarial report for a designated plan may require three valuations to be performed:

- (a) a going concern valuation, for the determination of going concern unfunded liabilities;
- (b) a solvency valuation to determine the existence of solvency deficiencies; and
- (c) a MFV to satisfy the ITR.

Sections 3.02, 6.01B and 6.01C of the Standard clearly indicate that one of the fundamental purposes of an actuarial report is to determine the "actuarial funding contribution". This purpose is consistent with the definition in the PBAR of a "going concern valuation". At the same time however, it may be appropriate to outline the additional contributions or contribution limits imposed by legislation such as for solvency or MFV purposes. However, this would represent more than one separate purpose and separate valuation results would be required for each purpose.

Section 2.05 of the Standard also requires that all plan provisions that materially affect the valuation results must be included in the valuation. The Standard would permit the exclusion or modification of the plan provisions included in the MFV because of legislation. However, it would not be permissible to exclude or modify those provisions for determining the "actuarial funding contribution". Sections 4.06 (Statement as to Assumptions) and 6.02 (Statement as to Methods) of the Standard also allow for deviation from assumptions and methods that are appropriate, **but only for the valuation results provided for the purpose of satisfying legislation, not for the purposes of determining the "actuarial funding contribution"**.

After completing the three valuations, the actuary must determine the minimum contribution required by the PBAR as if the MFV was not performed. If the MFV indicates that the eligible contribution is less than the contribution required to adequately fund the benefit (for each year of the period covered by the valuation), section 4(2.1) of the PBAR permits this lower contribution to be made.

However, it may not always be necessary to produce three sets of valuation results. Under many new plan designs for instance, the MFV assumptions and assumed plan provisions may be completely appropriate, eliminating the need for a separate MFV

and going concern funding valuation. Similarly, a full solvency valuation may not be required if the actuary can certify that there would be no solvency deficiency if all plan provisions were valued fully in accordance with solvency valuation requirements.

#### Special Payments for Designated Plans

Since the MFV will limit the funding contributions, there is a possibility that a solvency deficiency will arise due to insufficient contributions. Over a period of years, it is possible that schedules of solvency deficiency payments and going concern unfunded liability payments will be established due to continued annual underfunding.

At each valuation date, a requirement of the PBAR is to establish the present value of the future scheduled special payments in determining any new going concern unfunded liability or new solvency deficiency (or going concern surplus or solvency surplus as the case may be). Implicit in this requirement is the assumption that the special payments were paid as required in the inter-valuation period. However, due to the MFV limitations, there may be cases where the special payments which were actually made were less than those required to fully fund the benefits. In these circumstances, the present value of future special payments should be calculated on the basis of the schedule established at the previous valuation. The underfunding caused by the MFV will then automatically become part of any new solvency deficiency or going concern unfunded liability (or reduce any new going concern surplus or solvency surplus) established at the valuation date. This treatment will then give the employer the prescribed allowable period to fund these "experience" deficiencies.

#### Plans Which Change from Designated to Non-Designated Status

Under certain circumstances, a plan may move from a "designated" status to a "non-designated" status, either due to a change in demographics or via an exemption from the Minister of National Revenue.

Section 14(6.1) of the PBAR states that:

- 14 (6.1)** Where a pension plan ceases to be a designated plan, the administrator of the plan shall cause the plan to be reviewed and a report prepared and

certified by an actuary with a valuation date no later than the end of the fiscal year of the plan in which the plan ceased to be a designated plan.

by the Ontario legislation as calculated in the last valuation report filed, on a prospective basis only, be paid without regard to the MFV. In these circumstances, the MFV would no longer limit eligible contributions to fully fund the benefits.

Under normal circumstances, a plan will cease to be a designated plan on December 31, 19xx. For greater certainty, Section 14(6.1) requires that a valuation should be performed as at December 31, 19xx, not at December 31, 19xx+1 if the plan's fiscal year is the calendar year. On the other hand, if the plan's fiscal year end is November 30 for example, then it is permissible to perform the first non-designated plan valuation as at November 30, 19xx+1.

There is some question as to the amount of contributions that would be required in the period between the plan becoming non-designated and the completion and filing of the subsequent actuarial valuation report. For this period of time only, the PCO requires that the minimum contributions prescribed

At the first non-designated valuation, there may be significant solvency deficiencies and ongoing unfunded actuarial liabilities, caused by the MFV's. To reduce the impact of immediately funding these deficits, previously scheduled payments may be amortized at the level calculated when each deficiency was established. Any new solvency deficiency or going concern unfunded liability established at this valuation would be funded over 5 years, to 2002 or 15 years as the case may be.

It should also be noted that PBGF protection will begin 5 years after the date that the plan ceases to be a designated plan, but PBGF assessments and filings will be required as at all plan anniversaries on or following the date that the plan ceases to be designated.

#### **Who to Call For Help with AIR Filings and PBGF Assessment Certificates**

For help with filling out forms and answering questions on funding contributions and membership levels, for instance:

- refer to the spring 1995 supplement which includes instructions; or,
- if assistance is still required, contact the Pension Officer or Analyst assigned to the plan (see the table of assignments on the inside back cover).

If the mailed form is not received or the plan's registration number is incorrect:

#### **DO NOT PHOTOCOPY EITHER THE AIR OR THE GUARANTEE FUND ASSESSMENT CERTIFICATE**

- request a computer generated original with plan specific information and a payment bar-coded remittance slip
- for a replacement original call Rose-Ann Drakes, Pension Assistant at 416-314-0585.
- see the announcement about replacement forms on the outside back cover of this issue

Questions involving fees, penalties and interest payments:

- contact Gina Potter, Financial Analyst at 416-314-0672

Questions involving Revenue Canada's Schedule A to the AIR:

- contact Revenue Canada, Registered Plans Division, General Enquiries Service at 613-954-0419.



## 1996 Maximum Annual Withdrawal Amount Table for an Ontario Life Income Fund (LIF)

Age at Jan. 1, 1996	New age during 1996	Years to end of year age 90 is attained	Maximum withdrawal as a percentage of the LIF balance at Jan. 1, 1996*
48	49	42	6.99135%
49	50	41	7.02821%
50	51	40	7.06771%
51	52	39	7.11006%
52	53	38	7.15552%
53	54	37	7.20434%
54	55	36	7.25683%
55	56	35	7.31330%
56	57	34	7.37413%
57	58	33	7.43973%
58	59	32	7.51055%
59	60	31	7.58710%
60	61	30	7.66997%
61	62	29	7.75982%
62	63	28	7.85738%
63	64	27	7.96350%
64	65	26	8.07917%
65	66	25	8.20551%
66	67	24	8.34381%
67	68	23	8.49560%
68	69	22	8.66264%
69	70	21	8.84702%
70	71	20	9.05124%
71	72	19	9.27826%
72	73	18	9.53168%
73	74	17	9.81587%
74	75	16	10.13621%
75	76	15	10.49942%
76	77	14	10.91978%
77	78	13	11.41056%
78	79	12	11.98945%
79	80	11	12.68058%

\* The maximum annual withdrawal amount percentage is calculated on the basis of a twelve-month fiscal year to December 31, 1996 using the following interest assumptions:

- (1) the CANSIM B14013 rate for December, 1995 (7.43%) for the first 15 years, and
- (2) 6.00% for the years remaining to the end of the year in which the planholder attains 90 years of age. (Assumptions to age 90 are for the purpose of the calculation only. The balance of a LIF must be used to purchase a life annuity by the end of the year in which the planholder attains 80 years of age.)

Percentages shown must be prorated for the initial fiscal year if less than twelve months. Part of a month is treated as a full month.

Prepared by the Pension Commission of Ontario, January, 1996. Additional copies of this table and copies of articles published by the Pension Commission of Ontario about the Ontario LIF are available for pick-up from PCO reception.

## Rates of Interest Payable on Overdue Annual Filing Fees and Guarantee Fund Assessment Payments

Cheques must be made payable to the Minister of Finance. The registration number of the pension plan should be noted on the cheque.

### Annual Rates of Interest Payable on Overdue Annual Filing Fee Payments

<b>Apr. 1/88</b>	-	<b>Sep. 30/88</b>	<b>10%</b>	<b>Jul. 1/93</b>	-	<b>Sep. 30/93</b>	<b>6%</b>
Oct. 1/88	-	Mar. 30/89	11%	Oct. 1/93	-	Dec. 31/93	6%
<b>Apr. 1/89</b>	-	<b>Sep. 30/89</b>	<b>12%</b>	<b>Jan. 1/94</b>	-	<b>Mar. 31/94</b>	<b>6%</b>
Oct. 1/89	-	Mar. 31/90	14%	Apr. 1/94	-	Jun. 30/94	6%
<b>Apr. 1/90</b>	-	<b>Sep. 30/90</b>	<b>14%</b>	<b>Jul. 1/94</b>	-	<b>Sep. 30/94</b>	<b>7%</b>
Oct. 1/90	-	Mar. 31/91	15%	Oct. 1/94	-	Dec. 31/94	8%
<b>Apr. 1/91</b>	-	<b>Sep. 30/91</b>	<b>13%</b>	<b>Jan. 1/95</b>	-	<b>Mar. 31/95</b>	<b>7%</b>
Oct. 1/91	-	Mar. 31/92	10%	Apr. 1/95	-	Jun. 30/95	9%
<b>Apr. 1/92</b>	-	<b>Sep. 30/92</b>	<b>8%</b>	<b>Jul. 1/95</b>	-	<b>Sep. 30/95</b>	<b>10%</b>
Oct. 1/92	-	Mar. 31/93	7%	Oct. 1/95	-	Dec. 31/95	8%
<b>Apr. 1/93</b>	-	<b>Jun. 30/93</b>	<b>7%</b>	<b>Jan. 1/96</b>	-	<b>Mar. 31/96</b>	<b>8%</b>

### Monthly Rates of Interest Payable on Overdue Guarantee Fund Assessment Payments

Year	% Jan	% Feb	% Mar	% Apr	% May	% Jun
1987	12.25	12.25	11.75	12.25	12.50	12.50
1988	12.75	12.75	12.75	13.25	13.25	13.75
1989	15.25	15.75	16.50	16.50	16.50	16.50
1990	16.50	17.25	17.25	17.75	17.75	17.75
1991	15.25	14.25	14.25	13.75	12.75	12.75
1992	10.50	10.50	11.25	10.75	10.50	10.00
1993	9.75	9.50	9.00	9.00	9.00	9.00
1994	8.50	8.50	9.25	9.75	9.75	11.00
1995	12.25	12.50	12.75	12.75	12.25	11.75
1996	10.25	10.00				

Year	% Jul	% Aug	% Sep	% Oct	% Nov	% Dec
1987	12.50	13.00	13.00	12.75	12.75	12.75
1988	13.75	14.25	14.75	14.75	14.75	15.25
1989	16.50	16.50	16.50	16.50	16.50	16.50
1990	17.75	17.25	16.75	16.75	16.25	15.75
1991	12.75	12.75	12.50	11.75	11.50	11.00
1992	9.75	9.50	9.25	10.75	12.75	10.25
1993	8.75	8.75	8.75	8.75	8.50	8.50
1994	10.50	10.25	10.00	10.00	10.00	11.00
1995	11.25	11.00	11.00	11.00	10.75	10.50
1996						

\*Interest rates are determined based on the CANSIM B14020 rate plus 3%.

## Superintendent of Pensions - Notices/Orders

### Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) Pension Plan for Salaried Employees of King Equipment Manufacturing Corp., PN 0340273 (previously C-3155), (effective February 26, 1993), June 28, 1995
- 2) Atlas Radio Corporation Limited and Participating Companies Pension Plan, PN 0229195 (previously C-7062), (effective December 7, 1993), June 28, 1995
- 3) Pension Plan for Salaried Employees of Algra Plastics Inc., PN 0682161 (previously C-104326), (effective November 8, 1993), July 17, 1995
- 4) Pension Plan for Union Employees of Algra Plastics Inc., PN 0682179 (previously C-104327), (effective November 8, 1993), July 17, 1995
- 5) Retirement Plan for the Employees of Bectar Corporation, PN 0954271, (previously C-101954), (effective December 18, 1992), August 18, 1995
- 6) T.A.G. Apparel Group Inc., Contributory Pension Plan for Employees of Kayser-Woods Canada Inc. and Paramount Hosiery Inc., PN 0385963 (previously C-101412), (partially wound up effective February 27, 1990), September 8, 1995
- 7) T.A.G. Apparel Group Inc., Contributory Pension Plan for Employees of Kayser-Woods Canada Inc. and Paramount Hosiery Inc., PN 0385963 (previously C-101412), (effective July 9, 1991), September 8, 1995
- 8) T.A.G. Apparel Group Inc., Non-Contributory Pension Plan for Salaried Employees of Kayser-Woods Canada Inc. and Paramount Hosiery Inc., PN 0974212 (previously C-101413), (partially wound up effective February 27, 1990), September 8, 1995
- 9) T.A.G. Apparel Group Inc., Non-Contributory Pension Plan for Salaried Employees of Kayser-Woods Canada Inc. and Paramount Hosiery Inc., PN 0974212 (previously C-101413), (effective July 9, 1991), September 8, 1995

- 10) Canadian Building Systems Inc. Pension Plan for Members of United Steelworkers of America Local 6791, PN 0225888 (previously C-9344), (for those members who ceased to be employed effective between January 29, 1992 and April 10, 1992), September 21, 1995
- 11) Pension Plan for Employees of Glen L. Coulter Financial Services Ltd., PN 0486357 (previously C-19318), (effective July 17, 1989), September 21, 1995
- 12) Canadian Building Systems Inc. Pension Plan for Salaried Employees, PN 0225896, (previously C-9343), (for those members who ceased to be employed effective between January 29, 1992 and April 10, 1992), September 21, 1995
- 13) Standard Trustco Limited Employees' Retirement Plan, PN 0556340 (previously C-11385), (effective June 28, 1991), December 14, 1995

### Amended Notice of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, [Notice of Proposed Wind-up Order], issued an amended Notice of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) Imperial Oil Limited Retirement Plan (1988), PN 0347054 (previously C-8884) and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., (effective between February 4, 1992 and June 30, 1995 or the date the last member of the Plans employed by Imperial Oil at its IOCO refinery ceases employment, whichever is later), March 16, 1995 (Amended November 29, 1995)



## **Notices of Proposal to Revoke and Refuse Registration**

The Superintendent, pursuant to section 89(1) of the PBA, [Notice of Proposal to Revoke and Refuse Registration], issued Notices of Proposal to Revoke and Refuse Registration pursuant to section 18 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) Pension Plan for Employees of Brantford Packers Limited, PN 0556381, (previously C-11418), July 14, 1995

### **Orders - Section 69 of the PBA**

The Superintendent issued Orders, pursuant to section 69 of the PBA [Wind-up Orders], as follows (effective date of wind up and date of order indicated, respectively):

- 1) Retirement Plan for Employees of The Alger Press Limited, PN 0574301 (previously C-12322), (effective June 4, 1993), June 28, 1995
- 2) Retirement Plan For The Employees of The Hearn/Kelly Printing Company Limited, PN 0266346 (previously C-3206), (effective November 18, 1993), June 28, 1995
- 3) Pension Plan for Salaried Employees of Carpita Corporation and Subsidiary and Affiliated Companies, PN 0598425 (previously C-15303), (effective June 29, 1990), July 12, 1995
- 4) Atlas Radio Corporation Limited and Participating Companies Pension Plan, PN 0229195 (previously C-7062), (effective December 7, 1993), September 20, 1995
- 5) Pension Plan for Union Employees of Algra Plastics Inc., PN 0682179 (previously C-104327), (effective November 8, 1993), September 20, 1995
- 6) Pension Plan for Salaried Employees of Algra Plastics Inc., PN 0682161, (previously C-104326), (effective November 8, 1993), September 20, 1995
- 7) Canadian Building Systems Inc. Pension Plan for Salaried Employees, PN 0225896 (previously C-9343), (effective between January 29, 1992 and April 10, 1992), November 7, 1995
- 8) Canadian Building Systems Inc. Pension Plan for Members of United Steelworkers of America Local 6791, PN 0225888 (previously C-9344), (effective between January 29, 1992 and April 10, 1992), November 7, 1995
- 9) Pension Plan for Employees of Glen L. Coulter Financial Services Ltd., PN 0486357 (previously C-19318), (effective July 17, 1989), November 7, 1995

- 10) T.A.G. Apparel Group Inc., Contributory Pension Plan for Employees of Kayser-Woods Canada Inc. and Paramount Hosiery Inc., PN 0385963 (previously C-101412), (wound up in part effective February 27, 1990), November 20, 1995
- 11) T.A.G. Apparel Group Inc., Contributory Pension Plan for Employees of Kayser-Woods Canada Inc. and Paramount Hosiery Inc., PN 0385963 (previously C-101412), (wound up in whole effective July 9, 1991), November 20, 1995
- 12) T.A.G. Apparel Group Inc., Non-Contributory Pension Plan for Salaried Employees of Kayser-Woods Canada Inc. and Paramount Hosiery Inc., PN 0974212 (previously C-101413), (wound up in part effective February 27, 1990), November 20, 1995
- 13) T.A.G. Apparel Group Inc., Non-Contributory Pension Plan for Salaried Employees of Kayser-Woods Canada Inc. and Paramount Hosiery Inc., PN 0974212 (previously C-101413), (wound up in whole effective July 9, 1991), November 20, 1995
- 14) Retirement Plan for Employees of American Healthcare Mfg. (Canada) Ltd., PN 0988964 (previously C-104144), (effective February 28, 1992), December 6, 1995
- 15) Pension Plan for Employees of American Healthcare Mfg. (Canada) Ltd. who are Members of the Canadian Automobile, Aerospace & Agricultural Workers (CAW) and its Local 397, PN 0490326 (previously C-19292), (effective February 28, 1992), December 6, 1995
- 16) Registered Retirement Plan for the Employees of Elan Corporation, PN 0567024 (previously C-14137), (effective May 3, 1991), December 6, 1995

### **Appointments of Administrators - Section 71 of the PBA**

The Superintendent appointed third party administrators pursuant to subsection 71(1) of the PBA to wind up the plan in whole or in part.

- 1) **Metropolitan Life Insurance Company** appointed as the administrator of the Transcrane Manufacturing Limited Pension Plan, PN 0464842 (previously C-19876) effective November 1, 1995.
- 2) **Sun Life of Canada** appointed as the administrator of Formart Graphics Inc. Pension Plan, PN 0971408 effective November 1, 1995.
- 3) **London Life Insurance Company** appointed as the administrator of the Retirement Plan for the Employees of Enereau Investments Inc., PN 0929927 (previously C-100236) effective November 2, 1995

## Tribunal Activities

### Your Questions About Tribunal Matters Answered

*This section is based on enquiries from our readers. It must be remembered that, although you may believe that you are in a situation similar to the one described in this section, the answer to any question is subject to the facts of each particular case and the applicable law. Accordingly, the answers to the questions in this section have no legal authority, nor should be construed as legal, actuarial, accounting or other professional advice. You should obtain independent professional advice if you have a particular interest in any of the matters addressed in this section.*

*All references to the Act and Regulations are to the Pension Benefits Act, R.S.O. 1990, Chapter P.8 and R.R.O. 1990, Reg. 909 unless otherwise indicated.*

**Q. I learned that a surplus application will be heard by the Commission at its next meeting. I am a plan member with an interest in the application and would like to get some more information. What should I do?**

A. Plan members or former members wishing to express their views about an application or wishing to receive more information, should write to the Registrar outlining their concerns or requesting additional information. The Registrar will acknowledge receipt of any submissions and ensure that they are brought to the attention of the Commission when the matter is before it.

If information is requested which pertains to benefits, the Registrar will forward a copy of the letter to the administrator of the plan with a request that he/she respond directly to the enquiry. All representations made to the Commission are public documents and copies may be provided to all parties to an application and may be examined by any member of the public wishing to view the documents.

If members or former members wish to attend the Commission hearing relating to a particular matter, they should send the Registrar a letter stating that intent. Once a matter is scheduled to be heard by the Commission, the Registrar will advise all plan members or former members who made representations of the date when the matter will be heard. In addition, the Registrar will forward to those individuals a copy of the staff report which will be given to the Commission.

- 4) **Arthur Andersen Inc.** appointed as the administrator of The S.I. Guttman Limited Executive Pension Plan, PN 0901082 effective October 2, 1995
- 5) **Price Waterhouse Limited** appointed as the administrator of the Pension Plan for Employees of Technical Service Council, PN 0313452 (previously C-4635) effective October 4, 1995.
- 6) **Manufacturers Life Insurance Company** appointed as the the administrator of the Employee Pension Plan for The Arthur S. Leitch Company Limited, PN 0239251 (previously C-1113) effective October 4, 1995.
- 7) **Ernst and Young Inc.** appointed as the administrator of the IPCO Corporation Canadian Employees' Retirement Plan, PN 0584417, effective October 11, 1995.
- 8) **MLH+A Inc.** appointed as the administrator of the Pension Plan for the Hourly Employees of Magnetek Polygon Transformer Co., A Division of Magnetek National Electric Coil Limited, PN 0996942 effective October 18, 1995
- 9) **Manufacturers Life Insurance Company** appointed as the administrator of The Pension Plan for the Employees of G & D Schnarr Construction Ltd., PN 0927913 effective September 28, 1995
- 10) **The Canada Life Assurance Company** appointed as the administrator of the Revised Pension Plan for Employees of Maplex General Insurance Company, PN 0521278 effective September 27, 1995
- 11) **Arthur Andersen Inc.** appointed as the administrator of the Pension Plan for Wage Employees of Epton Industries Inc., PN 0950923 (previously C-101854) effective September 7, 1995.
- 12) **Arthur Andersen Inc.** appointed as the administrator of the Retirement Plan for Salaried Employees of Epton Industries Inc., PN 0932202 (previously C-19121) effective September 7, 1995.
- 13) **Arthur Andersen Inc.** appointed as the administrator of the Pension Plan for Employees of Income Trust Company, PN 0560235 (previously C-11197) effective April 12, 1995.

Firms interested in acting as an appointed administrator should contact Sheila Fish, Senior Manager, Insolvencies, Compliance and Enforcement at 416-314-0619 for more details.



If a member or former member wishes to view an application and other documentation pertaining to an application, he/she should contact the Registrar and make an appointment to view the documents at the Commission offices.

**Q. How should a party to a surplus application respond to issues raised in a staff report prepared for the Commission?**

- A. Approximately 14 days prior to the meeting at which a surplus application is to be heard by the Commission, the Registrar sends the applicant and all who have filed written submissions in response to the application, by fax, a copy of the staff memorandum which the Commission will have before it when it considers the application. If a party wishes to respond to the issues raised in the staff memorandum, **18 copies** of the written response should be sent to the Registrar by the date specified (approximately 9 days prior to the Commission meeting). Persons making submissions should transmit copies of their submissions to the other interested parties and should advise the Registrar of the names of the parties who have been provided with copies and the date of transmittal. If a submission is lengthy and time does not permit the Commission members to review the material prior to the Commission meeting or if the principles of natural justice and procedural fairness would not be served by proceeding with the application at the scheduled meeting, it may be necessary for the Commission to defer consideration of an application until a subsequent Commission meeting. Please also refer to the policy and procedure S900-501 for more detail.

**Q. I am a lawyer representing plan members who oppose a surplus application that is to be heard by the Commission. What procedural rules does the Commission follow in dealing with contested surplus applications?**

- A. Any party opposing a surplus application that is to be heard by the Commission is welcome to file written submissions with the Registrar. These submissions will be placed before the Commission when the matter is heard.

Where a surplus application is contested, the Chair may order a pre-hearing conference with all interested parties in advance of the

Commission meeting at which the application is to be heard. This would generally take the form of a conference call. The purpose of the call is for the Chair to hear from the parties on how they wish to proceed, to determine how much Commission time must be set aside for the application, and to ensure an efficient and orderly process at the Commission meeting.

A party may request that a pre-hearing conference be held and should do so in writing to the Registrar indicating the specific issues that are proposed to be discussed, suggested dates and times for a conference call and the names of all parties known to be interested in the matter.

**Q. I understand that the Commission wishes surplus applications to follow a certain format. Why do they insist on the format and what are the consequences if I fail to follow the format?**

- A. Under the *PBA*, it is the applicant's responsibility to show that the application satisfies the requirements of the Act and Regulations. To assist those making such applications, the Commission published policy S900-501 which sets out the information that the Commission typically requires to decide an application.

A recent surplus application that did not comply with S900-501 was set over because it did not demonstrate compliance with the Act and Regulation. The application was poorly organized and there was no index. Furthermore, there was no indication of how the requirements of the Act and Regulation had been met, e.g., there was no analysis of the plan provisions to demonstrate how the requirements of clause 79(3)(b) of the Act were satisfied (i.e., that the plan provided for a surplus refund to the employer). Unless applications follow a logical format, such as that recommended in policy S900-501, the Commission may not be able to determine if the requirements of the legislation have been satisfied.

If an application does not follow the format set out in the Commission's published policy (S900-501), it is difficult for staff to review and for the Commission to satisfy itself that all legislative requirements have been met. This may result in delays in reviewing the application or in the Commission making a decision. If the Commission denies an application or requests



that an application be redone, it will be treated as a new application on the date it is re-filed with the Registrar and the 90-day processing period will begin on the day it is re-filed.

The Commission policy is intended to assist applicants to avoid such situations and to assist all potential applicants by making them aware of how an application is normally processed. This should reduce or eliminate the possibility of delay and the costs associated with delay or confusion.

**Q. Is there an automatic right to an oral hearing in surplus matters?**

- A. Surplus applications are not subject to the *Statutory Powers Procedure Act* ("the SPPA") according to subsection 79(7) of the PBA, and therefore there is no right to an oral hearing before the Commission. Nevertheless, depending on the facts and the issues of the case, if a surplus application is contested, the Chair may set the matter over to be heard by a panel of Commission members at a separate hearing.

**Q. Is there an automatic right to a pre-hearing conference?**

- A. Whenever the Commission holds an oral hearing, it will require a pre-hearing conference. On request of the parties and subject to the Chair's approval, the pre-hearing may be by way of a telephone conference call.

Usually there is no oral hearing with respect to surplus applications so normally there is no pre-hearing conference for such applications.

**Q. Why is notice so important?**

- A. Under the terms of clause 8(1)(b) of the Regulations, the Commission may approve a surplus sharing agreement when a certain proportion of the members, former members and other persons have consented to the application. The Commission therefore must be sure that the consents are legally valid. This means that those asked to consent must have all necessary information on which to base their decision. If a notice is defective or incomplete, the consents based on the notice may also be invalid. If there are misleading statements or statements that unfairly interpret the plan documents in the

notice, the consents may be seen to be invalid. In short, since consents are based on a notice, the notice must be complete and free of any misleading information.

**Q. Can an applicant contact the Chair to advise that a matter is to be adjourned? Should they? When? Who decides adjournment requests?**

- A. Prior to a matter being considered by the Commission, the applicant may request that a matter be adjourned. The request for an adjournment should be made to the Registrar in writing. Rulings on requests for adjournments are normally made by the Chair.

If an adjournment request is made very close to the date on which the matter is to be considered by the Commission, a phone call message as well as a fax to the Registrar is advisable.

Often, Commission members travel from out-of-town in order to attend a hearing. If a request for adjournment is going to be made, it should be done so that unnecessary travelling and expenses can be avoided.

**Q. What is required of the applicant when the Commission consents to an application subject to certain conditions being met?**

- A. When the Commission grants a "conditional consent" to an application, the Registrar will issue a letter stating the conditions which must be met before the consent is effective. The letter will advise the applicant that the Commission's consent is not effective until the Commission is satisfied that the conditions have been met. The applicant must provide the Commission with information in writing demonstrating that the conditions have been satisfied.

A typical condition is that members receive their share of the surplus before any surplus money is paid to an employer. Any matters with respect to the distribution of surplus amounts to members must be resolved to the satisfaction of the Commission before the condition imposed by the Commission is lifted. Until the condition is lifted, surplus must remain in the fund. Upon receiving evidence that the conditions have been satisfied, the Commission will give its consent and a letter will be issued by the Registrar advising of the Commission's consent.

**Q.** I work as in-house counsel for a trust company. Frequently I am presented with PCO consents relating to pension fund surplus payments to employers without having received any prior notification of a surplus withdrawal application having been filed with the PCO. In many cases I detect issues relating to employer entitlement to the surplus based on my interpretation of the current state of pension law. If I had been given the opportunity to review the application material at the time it was filed with the PCO, I think that problematic issues could be jointly addressed by myself and the employer so the trust company could avoid being seen as a last minute impediment by the employer anticipating an immediate surplus payment. Why is there no requirement in the *PBA* that requires a pension fund trustee to receive copies of surplus application material filed with the PCO? What steps can be taken by the PCO to assist trust companies in obtaining surplus application materials when they are filed with the PCO?

**A.** As you have pointed out, there is currently no requirement under the *PBA* for a copy of an employer's surplus application to be provided to the fund trustee. However, it is in the best interests of an employer who is considering making a surplus application to the Commission to identify and resolve any potential problems before proceeding with the application. The employer would, therefore, be well advised to consult with the trustee of the pension fund early in the process in order to ensure that any concerns the trustee may have are resolved before the final application is submitted to the Commission. If the trustee's concerns are not fully resolved prior to the filing of the application with the Commission, the employer may wish to consider providing a copy of the application to the trustee. This would enable the trustee to submit their concerns to the Commission for consideration by the Commission when making its decision.

**Q.** What is the policy of the Commission with respect to obtaining a variation of its consent to an application?

**A.** Although the Commission has no power to reconsider a matter once it has rendered a decision, the Commission may vary its consent.

For example, recently the Commission gave its consent to a surplus application and shortly after giving that consent, the applicant requested a proposed change in the method of paying surplus to the members. The Chair directed that the matter be brought back to the Commission. Upon considering the applicants' submissions, the Commission varied the terms of its decision.

**Q.** What is the Commission's policy with respect to issuing summonses to witnesses in hearings?

**A.** If a party wishes to compel the attendance of a witness at a hearing before the Commission, the party may submit a draft summons to the Registrar. The draft should be prepared in accordance with Form 1 under the *SPPA* and should specify the particular documents and things, if any, which the witness is to produce at the hearing. The Chair will then consider the request for the summons and, if the summons is issued, it will be returned to the requesting party who is responsible for serving the summons in accordance with the *SPPA*.

**Q.** Where applicants are represented by legal counsel, should counsel provide the Commission with a draft form of consent in situations where no court consent is required?

**A.** If draft terms of consent are included as part of an application to the Commission, or are filed with the Registrar prior to the Commission meeting when an application will be heard, the Commission will use them, amended as necessary. This has occurred in a number of recent cases with two positive effects: first, it may save time in issuing the Commission's consent following the Commission meeting and second, the wording of the consent is more likely to be in accordance with the applicant's wishes. Where an applicant does not have legal counsel or no draft form of consent has been submitted, the Commission will use its standard form of consent, amended as necessary.

**Q. I am a member of a pension plan which has implemented a systems conversion in its plan administration area. Recently I received an annual member statement that continued to show errors in pension data and entitlements which the plan administrator had previously acknowledged existed. The plan administrator continues to inform me that there are some problems with the new system but not to worry. Is there anything that the Pension Commission can do?**

**A. Section 22 of the Act requires the plan administrator to exercise care, diligence and skill in the administration of a pension fund. This would include establishing adequate systems and procedures to assume control over all elements affecting a pension plan. Under s.98 of the Act, the Superintendent may require an administrator to supply information to ascertain whether there is compliance. This may include a request to have independent auditors conduct an internal control review over the required areas of the pension administration function and issue an opinion in accordance with s.5900 of the CICA Handbook as to the reliability of these internal controls.**

## PCO Board Members

The following members comprise the Commission:

Eileen E. Gillese, Chair until May 17, 1996  
Monica J. Townson, Vice Chair

Darcie L. Beggs, Shiraz Y.M. Bharmal, Kathryn M. Bush, Donald G. Collins, Elizabeth Greville, C. S. (Kit) Moore and Joyce A. Stephenson

## 1996 Dates for Commission Meetings and Application Filing Deadlines

Applicants who wish for a matter to be considered at a specified meeting date (Commission meetings are held on Thursday throughout the year, except in August) must file the application by the deadline as indicated in the table below.

Although PCO staff will use their best efforts to have the matter considered by the Commission on the desired date, no assurances are offered in this regard.

Commission Meeting Dates	Application Filing Deadlines
Thursday, March 28, 1996	Thursday, December 28, 1995
Thursday, April 25, 1996	Thursday, January 25, 1996
Thursday, May 30, 1996	Friday, March 1, 1996
Thursday, June 27, 1996	Friday, March 29, 1996
Thursday, July 25, 1996	Friday, April 26, 1996
Thursday, September 19, 1996	Friday, June 21, 1996
Thursday, October 24, 1996	Friday, July 26, 1996
Thursday, November 21, 1996	Friday, August 23, 1996
Thursday, December 12, 1996	Friday, September 13, 1996



## Hearings Before the Commission

**Pension Plan for Employees of Brantford Packers Limited, PN 0556381 (previously C-11418) - Superintendent of Pensions' Proposal to Revoke and Refuse Registration dated July 14, 1995**

Request by counsel for Brantford Packers Limited and Mutual Life Assurance Company of Canada for a hearing pursuant to subsection 89(6) of the Pension Benefits Act. A pre-hearing conference scheduled for October 19, 1995, has been adjourned *sine die*.

**Caterpillar of Canada Ltd. Pension Plan for Hourly-Rated Members of C.A.W. Local 252, PN 0553214 (previously C-11292) and Caterpillar of Canada Ltd. Pension Plan for Bi-Weekly Employees, PN 0997494 (previously C-103378) - Notices of Proposal to Refuse to Approve a Partial Wind Up Report, dated October 3, 1995**

A request by counsel for Caterpillar of Canada Ltd. for a hearing pursuant to subsection 89(6) of the Pension Benefits Act with respect to Proposals dated October 3, 1995 of the Superintendent of Pensions to refuse to approve a partial wind up report. A Pre-Hearing Conference was held on January 4, 1996. The hearing will be held on April 30 and May 1, 1996.

**City of Ottawa Superannuation Fund, PN 0336701 (previously C-006131)**

A request by counsel for members of the City of Ottawa Superannuation Fund (COSF) for a hearing pursuant to subsections 87(1) and 89(2) of the Act, regarding the Superintendent's approval of the registration of the amendment relating to early retirement benefits on September 21, 1995. A Pre-Hearing Conference will be held on March 21, 1996.

**The Ferro Canadian Employees' Pension Plan, PN 0246371, (previously C-1248)**

An application for payment of surplus in relation to the above captioned, set to be heard by the Pension Commission of Ontario on July 27, 1995, was adjourned. A hearing panel considered written submissions and oral argument on November 8 and 22, 1995. The application was granted and the decision was released on December 19, 1995.

**Imperial Oil Limited Retirement Plan (1988), PN 0347054, (previously C-008884) and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., PN 0344002 (previously C-4280) - Proposed Order of the Superintendent for a Partial Wind Up of the Plans**

Request by Imperial Oil for a hearing with respect to the proposed Order of the Superintendent of Pensions dated March 16, 1995 regarding a partial wind up of the above plans. A pre-hearing conference was held July 13, 1995. A second pre-hearing conference was held on October 27, 1995. The hearing began on December 4, 5, 6 and 7, 1995. The hearing continued January 16, 17, 18, 29 and 30 1996.

**Molson Breweries Pension Plan for Toronto Brewery Workers PN 0379667 (previously C-10945) (Fleet Street Plan) and Molson Breweries Pension Plan, PN 0334094 (previously C-4116) (Etobicoke Plan)**

Request by the solicitors for the Canadian Union of Brewery and General Workers, Component 325, Local 325, requesting a hearing pursuant to section 89 of the PBA regarding the refusal of the Superintendent to make an order requiring the wind up of the Toronto Plan and the decision of the Superintendent regarding the combination of the two Plans and the transfer to the Etobicoke Plan. A Pre-Hearing Conference will be scheduled.

**Retirement Plan for Salaried Employees of Rockwell International of Canada Ltd. (Collins Canada Division), PN 0260398 (previously C-3771)**

An application for payment of surplus in relation to the above captioned, set to be heard by the Pension Commission of Ontario on July 27, 1995, was adjourned. A hearing panel was set to consider written submissions and oral argument on September 12, 1995. The applicant withdrew the application on September 11, 1995.

**Standard Trustco Limited Employees' Retirement Plan, PN 00556340 (previously C-11385)**

Request by counsel for Ernst & Young Inc., the Liquidator of Standard Trust Company, for a hearing pursuant to subsection 89(6) of the PBA, regarding the Superintendent's Proposal to Make an Order respecting the wind up of the Plan. A Pre-Hearing Conference will be scheduled.

Westinghouse Canada Inc. Pension Plan, PN 0348409 (previously C-10579) - Proposed Order of the Superintendent for a Partial Wind Up of the Plan effective October 1, 1992, at the London, Ontario division

Westinghouse Canada Inc. Pension Plan, PN 0348409 (previously C-10579) - Proposed Order of the Superintendent for a Partial Wind Up of the Plan effective August 11, 1994, at the Burlington, Ontario division

Westinghouse Canada Inc. Pension Plan, PN 0348409 (previously C-10579) - Proposed Order of the Superintendent for a Partial Wind Up of the Plan effective June 30, 1991, at the Beach Road, Hamilton, Ontario division

Request for a Hearing by Westinghouse Canada Inc. pursuant to three Notices of Proposal to Make an Order requiring the plan be wound up in part effective October 1, 1992, August 11, 1994, and June 30, 1991. The Commission granted a request for an adjournment.

#### **Commission Decisions Applications Approved Since April, 1995**

**Surplus Withdrawal on Plan Wind Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909 (as amended by O. Reg. 743/91) and s. 78(1) and 79(3) of the Act**

At the Commission meeting held May 25, 1995, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Galtaco Incorporated Pension Plan for Executive Officers, PN 0554774 (previously C-11321)**

Payment of surplus to Galtaco Inc., from the Galtaco Incorporated Pension Plan for Executive Officers of Galtaco Inc., PN 0554774 (previously C-11321), in the amount of \$463,100 as at June 30, 1991, plus investment earnings thereon to the date of payment and subject to adjustment for actuarial and related expenses (excluding legal fees).

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(b) Non-Contributory Pension Plan for Bargaining Unit Employees of Etobicoke Plant - Metropolitan Toronto of Canadian General Tower, PN 0402537 (previously C-15791)**

Payment of surplus to Canadian General Tower Limited, from the Non-Contributory Pension Plan for Bargaining Unit Employees of Etobicoke Plant - Metropolitan Toronto, PN 0402537 (previously C-15791), in the amount of \$495,868 as at January 10, 1992, plus investment earnings thereon to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(c) Consolidated Retirement Income Plan for Canadian Employees of Akzo America Inc., PN 0289231 (previously C-14670)**

Payment of surplus to Organon Teknika Inc., from the Consolidated Retirement Income Plan for Canadian Employees of Akzo America Inc., PN 0289231 (previously C-14670), in the amount of \$56,300 as at December 31, 1991, plus investment earnings or losses thereon to the date of payment and adjusted for a payment of further expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held June 29, 1995, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Significant Shareholder Employees of Galbraith Reproductions Limited, C-17304**

Payment of surplus to Galbraith Reproductions Limited, from the Pension Plan for Significant Shareholder Employees of Galbraith Reproductions Limited, C-17304, in the amount of \$18,979.62 as at October 1, 1993, plus investment earnings thereon to the date of payment.

**(b) Pension Plan for Employees of MuRata Erie North America Ltd., PN 0965004 (previously C-101418)**

Payment of surplus to MuRata Erie North America, Ltd., from the Pension Plan for Employees of MuRata Erie North America, Ltd., PN 0965004 (previously C-101418), in the amount of \$98,062 as at September 30, 1994, plus investment earnings or losses thereon to the date of payment, less expenses.

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(c) Pension Plan for Employees of E.R. Carpenter Company of Canada Ltd., PN 0961821 (previously C-101781)**

Payment of surplus to E.R. Carpenter Company of Canada Ltd., from the Pension Plan for Employees of E.R. Carpenter Company of Canada Ltd., PN 0961821 (previously C-101781), in the amount of \$640,035 as at December 31, 1992, plus investment earnings or losses thereon to the date of payment, less expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held June 29, 1995, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission denied consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Employees' Pension Plan for Revenue Properties Company Limited, C-10946**

Denied Commission consent to a payment of surplus to Revenue Properties Company Limited, from the Employees Pension Plan, C-10946, in the amount of \$259,462 as at December 31, 1990, plus investment earnings or losses thereon to the date of payment.

The reasons for the decision are as follows:

The applicant failed to demonstrate to the Commission, whether and how the application satisfied clause 79(3)(b) of the Pension Benefits Act which requires that the "pension plan provides for the payment of surplus to the employer on the wind-up of the pension plan". An inadequate explanation of how the various terms of the pension plan documents are to be interpreted so as to meet the requirements of clause 79(3)(b) was provided.

In addition, it was not clear if sufficient disclosure of the plan (and prior versions of it) were contained in the notice. Full disclosure of all relevant information is necessary to enable members and former members to give an informed consent to the surplus agreement.

Finally, the Commission noted the letter from Robert Davidson of the Canadian Union of Public Employees. In the absence of a response from the applicant to the Union's position, the Commission was unable to conclude that the Union's consent was not necessary according to s. 8(1)(b)(ii) of the Regulations.



At the Commission meeting held July 27, 1995, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Employees of Morse Shoe (Canada) Ltd., PN 0902569 (previously C-5056)**

Payment of surplus to Morse Shoe (Canada) Ltd., from the Pension Plan for Employees of Morse Shoe (Canada) Ltd., PN 0902569 (previously C-5056), in the amount of 66 2/3% of \$928,783 (the amount of surplus in the Pension Plan as at December 31, 1990, the effective date of the wind up of the Pension Plan) plus 66 2/3% of investment earnings on \$928,783 from December 31, 1990 to the date of payment to the Applicant and minus 66 2/3% of (i) the legal fees and disbursements incurred by the Applicant in respect of this Application and (ii) all other costs and expenses related to the continuing administration and wind up of the Pension Plan.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

By way of telephone conference call, a quorum of the Commission considered a proposal by the applicant and varied the terms of its decision in the above matter as follows:

The Commission has approved the suggested course of action set out in your letter of January 15, 1996, whereby you propose that the amounts of basic benefits and/or surplus payable to the 14 individuals who have not been located be retained by Mutual Life Assurance Company of Canada in segregated accounts pending payment to these individuals in the event that they are located or come forward and all other terms as outlined in your letter of January 15, 1996.

Please advise the Commission once the transfer of these funds to Mutual Life has occurred and that all remaining payments of surplus and/or basic benefits have been made to those individuals who can be located. Once the Commission is satisfied that the conditions of the Commission's consent have been satisfied, the Commission will issue its consent.

**(b) Pension Plan of Morguard Investments Limited for B.H. Clark, PN 0946814 (previously C-101281)**

Payment of surplus to Morguard Investments Limited, from the Pension Plan of Morguard Investments Limited for B.H. Clark, PN 0946814 (previously C-101281), in the amount of \$39,330 as at March 1, 1994, plus investment earnings thereon to the date of payment.

**(c) Pension Plan for the Employees of International Aeradio (North America) Limited, PN 0579482 (previously C-14629)**

Payment of surplus to BT Toronto Telecommunications Inc. (formerly International Aeradio (North America) Limited), from the Pension Plan for the Employees of International Aeradio (North America) Limited, PN 0579482 (previously C-14629), in the amount of 66 2/3% of \$555,487 as at December 31, 1986, plus 66 2/3% of investment earnings thereon to the date of payment, less 66 2/3% of (i) the legal fees and disbursements incurred, by the Applicant and by the members and former members represented by Koskie Minsky, on or after March 1, 1993 and (ii) all other costs and expenses related to the continuing administration and wind up of the pension plan.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(d) Pension Plan for Employees of Hamilton Wentworth Credit Union Limited, PN 0231936 (previously C-3069)**

Payment of surplus to Hamilton Wentworth Credit Union Limited, from the Pension Plan for Employees of Hamilton Wentworth Credit Union Limited, PN 0231936, (previously C-3059), in the amount of \$514,577 as at March 31, 1992, plus investment earnings thereon to the date of payment less expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held November 23, 1995, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission varied the terms of its decision in the above matter as follows:

The Chair reported that by letter dated October 31, 1995, counsel to the applicant advised the Commission of a proposed change in the method of paying the surplus to the members. The Chair directed that the matter be brought back to the Commission.

On November 8, 1995, a quorum of the Commission considered the submissions in the letter and varied the terms of its decision so its consent reads as follows:

Based on the application and the submission of documents required under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "Act") and Regulation 909, R.R.O. 1990, as amended, the Pension Commission of Ontario, at a Commission meeting of November 8, 1995, varied the consent given on July 27, 1995 in this matter so its consent is pursuant to subsection 78(1) of the Act and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended, to a payment of surplus to Hamilton Wentworth Credit Union Limited, from the Pension Plan for Employees of Hamilton Wentworth Credit Union Limited, PN 0231936, (previously C-3069), in the amount of \$514,577 as

at March 31, 1992, plus investment earnings thereon to the date of payment plus \$89,123 as at October 1, 1995 with investment earnings thereon to the date of payment less expenses. The amount of \$89,123 will be paid to the Company in order that a retiring allowance may be paid directly by the Company.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(e) Retirement Plan for Employees of Western Engineering Services Limited, PN 0316414, (previously C-1497)**

Payment of surplus to Western Engineering Services Limited, from the Retirement Plan for Employees of Western Engineering Services Limited, PN 0316414, (previously C-1497), in the amount of \$61,701 as at March 1, 1994, plus investment earnings thereon to the date of payment and adjusted for expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(f) Pension Plan for Hourly Employees of ESSROC Canada Inc., PN 0544973 (previously C-10860)**

The motion by certain members and former members of the plan to adjourn the motion was denied.

Payment of surplus to ESSROC Canada Inc., from the Pension Plan for Hourly Employees of ESSROC Canada Inc., PN 0544973 (previously C-10860), in the amount of 50% of \$7,530,416 as at February 28, 1994, plus investment earnings thereon to the date of payment, less 50% of (i) the legal fees and

disbursements incurred by the Applicant and by the Union (to a maximum of \$13,000) and (ii) all other costs and expenses related to the continuing administration and wind up of the Plan.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(g) Retirement Plan for Salaried Employees of Cantech Environmental Systems Inc., PN 0948125 (previously C-101702)**

Payment of surplus to Pangborn Corporation, A parent Company of Cantech Environmental Systems Inc., from the Retirement Plan for Salaried Employees of Cantech Environmental Systems Inc., PN 0948125 (previously C-101702), in the amount of \$226,646 as at November 12, 1992, plus investment earnings thereon to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(h) Mack Canada Inc. Hourly and Bargaining Pension Plans, PN 0276659 (previously C-3079)**

Payment of surplus to Mack Canada Inc., from the Mack Canada Inc. Hourly and Bargaining Pension Plans, PN 0276659 (previously C-3079), in the amount of \$286,700 as at August 6, 1993, plus investment earnings thereon to the date of payment and adjustment for expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which

members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

While the Commission recognized that the issue raised by counsel for the International Association of Machinists and Aerospace Workers is a valid concern, the Commission is of the view that it must take the wind up reports as approved. Under the Act, it is the Superintendent's obligation to do the technical work necessary to approve or reject the wind up report. The Commission's authority under section 88 is to enquire into wind up reports if they are satisfied that the assumptions were inappropriate. In this case, the Commission was not satisfied that the assumptions were inappropriate as the methods used were in accordance with generally accepted accounting principles.

This decision was rendered based on full and complete notice to the members, former members and beneficiaries and in light of the union's consent.

At the Commission meeting held September 28, 1995, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Kel-Gor Limited Pension Plan, PN 0431189 (previously C-16538)**

Payment of surplus to Kel-Gor Limited, from the Kel-Gor Limited Pension Plan, PN 0431189 (previously C-16538), in the amount of \$254,410 as at December 31, 1987 plus investment earnings thereon to the date of payment.

**(b) Non-Contributory Pension Plan for Salaried Employees of Certain Canadian Subsidiaries of Wickes Companies, Inc., PN 0936567 (previously C-100757)**

Payment of surplus to Wickes Companies, Inc., from the Non-Contributory Pension Plan for Salaried Employees of Wickes Companies, Inc., PN 0936567, (previously C-100757) in the amount of \$52,515 as at March 31, 1995, plus investment earnings thereon to the date of payment, less all expenses.



This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(c) Yvette Beauty Salons (Canada) Limited, PN 0423244 (previously C-16346)**

Payment of surplus to Glemby International Canada Ltd., the successor corporation of Yvette Beauty Salons (Canada) Ltd., from Yvette Beauty Salons (Canada) Limited, PN 0423244 (previously C-16346), in the amount of \$145,338.94 as at December 31, 1989, plus investment earnings thereon to the date of payment, less payment of expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(d) Pension Plan for Salaried Employees of C & D Charter Power Systems Canada, Inc., PN 0951715**

Payment of surplus to C & D Charter Power Systems, Inc., from the Pension Plan for Salaried Employees of C & D Charter Power Systems Canada, Inc., PN 0951715, in the amount of 60% of \$214,130 as at September 1, 1992, which after adjustments for earnings and expenses amounts to approximately \$69,898 as at March 31, 1995.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(e) Retirement Plan for Employees of Potter and Shaw Limited, Part B for Shareholders, C-103622**

Payment of surplus to Potter and Shaw Limited, from the Retirement Plan for Employees of Potter and Shaw Limited, Part B for Shareholders, C-103622, in the amount of \$25,919.23 as at June 1, 1992, plus investment earnings thereon to the date of payment.

**(f) The Rexnord Pension Plan for Mathews Conveyer Company of Canada Hourly Employees, C-4630**

Payment of surplus to Rexnord Canada Limited, from The Rexnord Pension Plan for Mathews Conveyer Company of Canada Hourly Employees, C-4630, in the amount of \$1,163,335 as at August 31, 1993, plus investment earnings thereon to the date of payment less 30% of the wind up expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(g) The Pension Plan for Designated Employees of Dearborn Computer Canada Limited, PN 0599969 (previously C-15797)**

Payment of surplus to Dearborn Computer Canada Limited, from The Pension Plan for Designated Employees of Dearborn Computer Canada Limited, PN 0599969 (previously C-15797), in the amount of \$390,724.85 as at April 30, 1995, plus investment earnings thereon to the date of payment.

The Commission noted that although the application did not comply with section 78(2) of the Act and subsections 28(5), 28(5.1) and 28(6) of the regulations, the sole, significant shareholder of the plan waived the notice requirements.

**(h) Revised Retirement Plan (1977) for Employees of Crum & Forster of Canada Ltd. and Associated Companies, PN 0287276 (previously C-1883)**

Payment of surplus to Crum & Forster of Canada Ltd. from the Revised Retirement Plan (1977) for Employees of Crum & Forster of Canada Ltd. and Associated Companies, PN 0287276 (previously C-1883), in the amount of \$1,145,895 as at November 1, 1991 plus investment earnings thereon to the date of payment adjusted for expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held October 26, 1995, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Executive Employees of The Orangeroo Group Inc., PN 0598938 (previously C-15612)**

Payment of surplus to The Orangeroo Group Inc., from the Pension Plan for Executive Employees of The Orangeroo Group Inc., PN 0598938 (previously C-15612), in the amount of \$139,900 as at December 31, 1993 plus investment earnings thereon to the date of payment less any expenses associated with the wind up of the plan.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements and any other payments to which the member is entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(b) Pension Plan for Designated Employees of Peter Robinson Insurance Associates Limited, C-15518**

Payment of surplus to Peter Robinson Insurance Associates Limited, from the Pension Plan for Designated Employees of Peter Robinson

Insurance Associates Limited, C-15518, in the amount of \$17,142 as at December 31, 1990, plus investment earnings thereon to the date of payment.

**(c) Metropolitan Insurance Company Employees' Pension Plan, PN 0556266, (previously C-11383)**

Payment of surplus to Metropolitan Life Insurance Company of Canada, from the Metropolitan Insurance Company Employees' Pension Plan, PN 0556266 (previously C-11383), in the amount of 85% of \$2,197,845 as at February 1, 1993, plus 85% of investment earnings thereon to the date of payment and minus 85% of (i) the legal fees and disbursements incurred by the Applicant and (ii) all other costs and expenses related to the continuing administration and wind up of the Plan. The Company's share of surplus will be reduced by the legal fees and disbursements incurred by the members and former members of the plan represented by Koskie Minsky.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

The Commission further consents that, if the Applicant is unable to contact any missing members or former members of the Plan, the amounts of surplus payable to the persons who cannot be located be retained by Mutual Life Assurance Company of Canada in segregated accounts pending payment to these individuals in the event that they are located or come forward, whereupon Mutual Life will undertake to pay to any such persons their surplus entitlement together with interest thereon to the date of payment. The Commission relies on the undertaking made by Mutual Life that once their records show that a missing individual has reached the age of 65, Mutual Life will make its best efforts to locate that individual through Health and Welfare Canada. If such search proves to be unsuccessful, then Mutual Life will continue to hold that individual's amount of surplus, with interest, in a segregated account.

**(d) Pension Plan for Employees of Mollenhauer Limited, PN 0237370 (previously C-11244)**

Payment of 50% of the surplus to Mollenhauer Residential Limited, from the Pension Plan for Employees of Mollenhauer Limited, PN 0237370 (previously C-11244). The assets of the pension plan are invested in a contract issued by Confederation Life, which is in liquidation. In the event that the liquidator of Confederation Life permits payment of the pension fund entitlement in instalments, 50% of each instalment shall be divided among the Plan members in proportion to their basic entitlements, after which the remaining 50% of such instalment may be paid immediately to Mollenhauer Residential Limited.

**(e) Champion Spark Plug Division Cooper Industries (Canada) Inc. Champion Unit of Local 195 C.A.W. Pension Plan, PN 0230912 (previously C-3464)**

Payment of surplus to Cooper Industries (Canada) Inc. from the Champion Spark Plug Division Cooper Industries (Canada) Inc. Champion Unit of Local 195 C.A.W. Pension Plan (the "Pension Plan"), PN 0230912 (previously C-3464), in the amount of 35% of the surplus in the Pension Plan as at December 31, 1992, as identified in the wind up report (the "Report") approved by the Superintendent of Pensions in respect of the Pension Plan but without reference to the provision for future expenses included in the calculation of such surplus in the Report (the "Total Surplus"), plus 35% of the investment earnings on the Total Surplus to the date of payment, minus 35% of all costs, fees and expenses related to the continuing administration and wind-up of the Pension Plan.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus-sharing agreement, and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(f) Revised Supplementary Pension Plan for Hourly-Rated Employees of Dunham-Bush of Canada Limited, PN 0245787 (previously C-5593)**

Payment of surplus to Dunham Bush of Canada Limited, from the Revised Supplementary Pension Plan for Hourly-Rated Employees of Dunham-Bush of Canada Limited, PN 0245787, (previously C-5593) in the amount of \$154,186 as at December 31, 1993, plus investment earnings thereon to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(g) GEC Canada Employees' Retirement Plan, PN 0509273 (previously C-9228)**

Payment of surplus to EEV Canada Limited, from GEC Canada Employees' Retirement Plan, PN 0509273 (previously C-9228), in the amount of \$55,200 as at December 31, 1992, plus investment earnings thereon to the date of payment, less any additional expenses incurred in obtaining the surplus refund.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held November 23, 1995, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) The Revised Pension Plan for the Employees of Ennis-Pakin Steel Limited, PN 0288126 (previously C-13435)**

Payment of surplus to Ennis-Pakin Steel Limited, from The Revised Pension Plan for the Employees of Ennis-Pakin Steel Limited, PN 0288126 (previously C-13435), in the amount of \$18,209.58 as at June 1, 1993 plus investment earnings thereon to the date of payment, less wind-up expenses of \$750.00.



**(b) Pension Plan for Employees of Himsley Engineering Limited, PN 0942912 (previously C-15308)**

Payment of surplus to the Executors and Trustees of the Estate of Hannah Himsley, from the Pension Plan for Employees of Himsley Engineering Limited, PN 0942912 (previously C-15308), in the amount of \$270,000 as at September 30, 1995 plus investment earnings thereon to the date of payment, less all expenses related to the wind up and surplus distribution.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(c) Pension Plan for Employees of Royal Worcester Spode (Canada) Limited, PN 0565598 (previously C-11876)**

Payment of surplus to Royal Worcester Spode (Canada) Limited, from the Pension Plan for Employees of Royal Worcester Spode (Canada) Limited, PN 0565598 (previously C-11876), in the amount of \$76,537 as at December 31, 1989 (\$71,692 as at June 30, 1995) plus investment earnings thereon to the date of payment and adjusted for accrued expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission. The applicant must advise the Commission on how the benefit for the one deferred vested member who cannot be located will be administered.

**(d) The Retirement Plan for the Non-Union Staff Employees of Commonwealth Hospitality Ltd., PN 0560870 (previously C-11547)**

Payment of surplus to Commonwealth Hospitality Ltd., from The Retirement Plan for the Non-Union Staff Employees of Commonwealth Hospitality Ltd., PN 0560870 (previously C-11547), of seventy percent (70%) of the \$2,082,799 amount of the windup surplus as at December 31, 1994 (as adjusted and recalculated to the date of distribution) provided, and on condition that, this consent shall not be effective until the applicant satisfies the Commission that all benefits and benefit enhancements and other payments under the Plan termination, including the employee share, have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

With respect to certain members, former members and other persons entitled to payments on Plan termination, (the "Unlocated Beneficiaries") provision for their benefit entitlements and other payments, including their portions of the Employee Share (the "Unlocated Beneficiary Fund") can be made by payment from the Unlocated Beneficiary Fund under Payment Provision A or Payment Provision B, as set out below:

Payment Provision A

The Company shall, between November 23 and December 6, 1995, approach those insurance companies which the Company is inviting to give annuity quotations, to provide for the Unlocated Beneficiary obligations by the making of a lump sum payment in the amount of the Unlocated Beneficiary Fund. The arrangement would stipulate that the insurance company would hold the sum so paid pending any of the Unlocated Beneficiaries providing proof of entitlement and being paid their entitlements by the insurance company. Forthwith after the date provided to it as the 65th birthday for any Unlocated Beneficiary, the insurance company will make inquiry to locate that person through Health and Welfare Canada.

If the Company is not able to conclude such an arrangement by December 6 on reasonable terms (including as to cost), and if the Chair of the Commission is satisfied that best efforts have been made, it can then proceed under Payment Provision B.

#### Payment Provision B

The Unlocated Beneficiary Fund would be paid to, and then held by, Montreal Trust, in trust for the Unlocated Beneficiaries, for a period of five years from the date of this consent, during which time efforts will be made by the Company to locate such persons, specifically by way of inquiry through Health and Welfare Canada to be made just prior to October, 2000. Upon any such person providing proof of entitlement, the obligation to such person will be satisfied by payment of his/her proportionate share of the Unlocated Beneficiary Fund (as adjusted to include earnings thereon and to deduct the expenses thereof). The balance of the Unlocated Beneficiary Fund remaining on November 23, 2000, may then be transferred to the Company. The Company (on its own behalf and on behalf of its successors and assigns) undertakes to pay such transferred amounts (together with interest thereon determined using CANSIM Series B 14045 tables) to such persons (or those legitimately claiming through them) who had not previously been paid, according to their proportionate entitlements, if they thereafter come forward to claim their entitlements.

#### **(e) Pension Plan for Employees of St. John Priory of Canada Properties, PN 0299289 (previously C-124)**

Payment of surplus to St. John Priory of Canada Properties, from the Pension Plan for Employees of St. John Priory of Canada Properties, PN 0299289 (previously C-124), in the amount of \$1,793,087 as at September 14, 1994 plus investment earnings thereon to the date of payment and less expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons

who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held November 23, 1995, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission denied consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

#### **(a) Retirement Plan for Salaried Employees of Dubois Chemicals of Canada Limited, PN 0442376 (previously C-16755)**

Denied Commission consent to a payment of surplus to Dubois Chemicals of Canada Limited from the Retirement Plan for Salaried Employees of Dubois Chemicals of Canada Limited and its Affiliates, PN 0442376 (previously C-16755), in the amount of \$1,306,454 as at June 30, 1992 and adjusted to reflect investment earnings or losses and expenses.

The reasons for the decision are as follows:

The notice issued under subsection 78(2) of the Act did not contain all the information prescribed by subsection 28(5) of the Regulation as it does not contain complete disclosure with respect to the contractual authority for surplus reversion; in particular, it did not refer to Section 12.01 of the prior plan, W.R. Grace & Co. If other sections of the prior plan or plans are relevant to surplus reversion, those must also be disclosed.

At the heart of clause 8(1)(b) of the Regulations is the need for valid consents. Full disclosure of all relevant information is necessary to enable members and former members to give an informed consent to the surplus agreement. The Commission cannot rely on the consents unless it is satisfied that the Notice fully disclosed all relevant information.

If the applicant wishes to make a new application in this matter, it must re-issue a notice which has full disclosure and which complies with the current Commission policies, including a statement that there is no standard method of calculating the amount of surplus attributable to employee and employer contributions and making available detailed description of the

method of attribution. The applicant must then demonstrate to the Commission that the requisite number of fully informed consents have been obtained based on that new notice. The Commission will retain the documentation for this application so that the applicant would not have to duplicate documentation previously supplied to the Commission.

The Commission noted the representations from Messrs. Clifton Smith and Allan Wilson.

At the Commission meeting held December 14, 1995, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Designated Employees of Rout Building Supplies Limited, PN 0406264 (previously C-15670)**

Payment of surplus to Rout Building Supplies Limited, from the Pension Plan for Designated Employees of Rout Building Supplies Limited, PN 0406264 (previously C-15670), in the amount of \$299,099 as at October 31, 1992 plus investment earnings thereon to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(b) Pension Plan for Employees of Trophy-Craft Limited, C-57**

Payment of surplus to Trophy-Craft Limited, from the Pension Plan for Employees of Trophy-Craft Limited, C-57, in the amount of \$624.65 as at June 30, 1992 plus investment earnings thereon to the date of payment.

**(c) Pipe Line Contractors Association of Canada Employees' Pension Plan, PN 0583385 (previously C-100930)**

Payment of surplus to Pipe Line Contractors Association of Canada, from the Pipe Line Contractors Association of Canada Employees'

Pension Plan, PN 0583385 (previously C-100930), in the amount of \$26,062 as at December 31, 1986 plus investment earnings thereon to the date of payment less expenses associated with operating the Plan.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which member and former member have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**(d) Pension Plan for Employees of Fuji Hunt Chemicals Ltd., PN 0551440 (previously C-10796)**

Payment of surplus to Olin Holdings Ltd., from the Pension Plan for Employees of Fuji Hunt Chemicals Ltd., PN 0551440 (previously C-10796), in the amount of \$20,000 as at March 1, 1995 plus investment earnings thereon to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**Applications Under Section 8 of the Regulations, and subsection 78(1) of the PBA - Request for Consent of the Commission to Surplus Withdrawal on Plan Wind Up to be filed in Court**

At the Commission meeting held June 29, 1995, the Commission consented pursuant to subsection 78(1) of the PBA and subsection 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) The Retirement Plan for the Non-Union Staff Employees of Commonwealth Hospitality Ltd., PN 0560870 (previously C-11547)**

Payment of surplus to Commonwealth Hospitality Ltd. out of The Retirement Plan for the Non-Union Staff Employees of



Commonwealth Hospitality Ltd., PN 0560870 (previously C-11547) in the amount of \$94,100 as at December 31, 1993, plus investment earnings thereon to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulations.

At the Commission meeting held July 27, 1995, the Commission consented pursuant to subsection 78(1) of the PBA and subsection 8(2) of the Regulations to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Inglis Limited Pension Plan for Members of Local 525 of the International Union of United Automobile, Aerospace and Agricultural Implement Workers of America, PN 0378588 (previously C-13318)**

Payment of surplus to Inglis Limited, from the Inglis Limited Pension Plan for Members of Local 525 of the International Union of United Automobile, Aerospace and Agricultural Implement Workers of America, PN 0378588 (previously C-13318), in the amount of \$1,195,347 as at March 31, 1995, plus investment earnings thereon to the date of payment.

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulations.

At the Commission meeting held September 28, 1995, the Commission consented pursuant to subsection 78(1) of the PBA and subsection 8(2) of the Regulations to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) The BW/IP International Ltd. Byron Jackson Division Pension Plan for Hourly Employees, PN 0581272 (previously C-14150)**

Payment of surplus to BW/IP International Inc., from The BW/IP International Ltd. Byron Jackson Division Pension Plan for Hourly Employees, PN 0581272 (previously C-14150), in the amount of \$171,079 as at October 1, 1988, plus investment earnings thereon to the date of payment less the costs of winding up the plan.

The Commission noted that there was no opposition from the Union and no representations were received.

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulations.

**(b) Nu-Kote Canada Inc. Employees' Retirement Income Plan, PN 0951533 (previously C-101113)**

Payment of surplus to Nu-Kote Canada Inc., from the Nu-Kote Canada Inc. Employees' Retirement Income Plan, PN 0951533 (previously C-101113), in the amount of \$460,824 as at June 29, 1989, plus investment earnings thereon to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulations.

At the Commission meeting held October 26, 1995, the Commission consented pursuant to subsection 78(1) of the PBA and subsection 8(2) of the Regulations to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Retirement Plan for Salaried Employees of Cooper Canada - Plan B, PN 0230904 (previously C-7929)**

Payment of surplus to Cooper Industries (Canada) Inc., for its own use absolutely, from the Retirement Plan for Salaried Employees of Cooper Canada - Plan B (the "Pension Plan"), PN 0230904 (previously C-7929), in an amount which is equal to that portion of the total surplus in the Pension Plan as at December 31, 1992, as identified in the partial wind up and plan conversion report approved by the Superintendent of Pensions on July 20, 1994 in respect of the Pension Plan (the "Report"), together with the fund rate of return thereon, which is referable to:

1. those individuals who as at December 31, 1992 were either (i) retirees or surviving beneficiaries in receipt of or entitled to receive a benefit from the Pension Plan or (ii) members with a deferred vested interest in the Pension Plan; and
2. those individuals who are members or former members of the Pension Plan and whose employment with the applicant was terminated between June 12, 1992 and December 31, 1992

(collectively, the "Partial Wind Up Group") and which remains after the following benefits have been provided to individuals in the Partial Wind Up Group:

- A. the benefit entitlements of all individuals in the Partial Wind Up Group who were active employees in the applicant's Champion Spark Plug Division as of June 12, 1992 will be fully vested, whether or not such members would be entitled to this benefit by law;
- B. early retirement "grow-in" rights will be provided to all individuals in the Partial Wind Up Group who were active employees in the applicant's Champion Spark Plug Division as of June 12, 1992, whether or not such members would be entitled to this benefit by law; and
- C. the basic benefit entitlements of all individuals in the Partial Wind Up Group will be enhanced by 30%, subject to such maximum limitations as may be imposed by

the *Income Tax Act* (Canada) and the Regulations thereunder.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus-sharing agreement, and any other payments to which the Partial Wind Up Group is entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held December 14, 1995, the Commission consented pursuant to subsection 78(1) of the PBA and subsection 8(2) of the Regulations to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Allied Chemical Canada Bargaining Unit Employees Pension Plan (Bendix Safety Restraints Ltd.), PN 0338897 (previously C-3278)**

Payment of surplus to AlliedSignal Canada Inc. from the Allied Chemical Canada Bargaining Unit Employees Pension Plan (Bendix Safety Restraints Ltd.), PN 0338897 (previously C-3278), in the amount of 50% of the surplus remaining after payment of expenses as provided for in the Order of the Court of Appeal, dated July 31, 1995, estimated to be \$2,275,500 as at September 1, 1995, plus investment earnings thereon to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulations.

**Surplus Withdrawal on Plan Wind Up - Clause 7a(2)(b) of Regulation 708/87**

At the Commission meeting held October 26, 1995, the Commission consented pursuant to subsection 79(1) of the *Pension Benefits Act*, 1987 and clause 7a(2)(b) of the Regulation thereunder to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Employees of Collins Safety Inc., C-100756**

Payment of surplus to Collins Safety Inc. in the amount of \$19,033 as at October 1, 1988 plus investment earnings thereon to the date of payment.

**Applications Approved under subsections 63(7) and (8) of the PBA - Return of Member Contributions**

At the Commission meeting held May 25, 1995, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) Revised Pension Plan for Employees of Barringer Research Limited and Barringer Laboratories Limited, PN 0508572 (previously C-9329)**

Refund of member required contributions from the Revised Pension Plan for Employees of Barringer Research Limited and Barringer Laboratories Limited, PN 0508572 (previously C-9329), in the amount of \$124,735 as at May 31, 1992 plus credited interest to the date of payment.

At the Commission meeting held June 29, 1995, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) Pension Plan for Employees of Laurentian Health Services Ltd., PN 0936427 (previously C-100099)**

Refund of member required contributions from the Pension Plan for Employees of Laurentian Health Services Ltd., PN 0936427 (previously C-100099), in the amount of \$27,297 as at November 1, 1991 plus credited interest to the date of payment.

At the Commission meeting held July 27, 1995, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) Retirement Plan for Employees of Feather Industries (Canada) Limited, PN 0496919, (previously C-18909)**

Refund of member required contributions from the Retirement Plan for Employees of Feather Industries (Canada) Limited, PN 0496919 (previously C-18909), in the amount of \$17,555.04 as at January 1, 1993 plus credited interest to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that the employer has paid in one lump sum the deficit which exists due to the assets not being sufficient to cover the commuted value of the benefits that are to be converted.

**(b) Canron Inc. Pension Plan for Designated Executives, PN 0520809 (previously C-23530)**

Refund of member required contributions from the Canron Inc. Pension Plan for Designated Executives, PN 0520809 (previously C-23530), in the amount of \$99,975 as at June 30, 1993 plus credited interest to the date of payment.

At the Commission meeting held September 28, 1995, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) Revised Pension Plan for Employees of Barringer Research Limited and Barringer Laboratories Limited, PN 0508752 (previously C-9329)**

Refund of member required contributions from the Revised Pension Plan for Employees of Barringer Research Limited and Barringer Laboratories Limited, PN 0508752 (previously C-9329), in the amount of \$446,322.23 as at December 31, 1993 plus credited interest to the date of payment.

**(b) Pension Plan for Supervisory & Executive Employees of Charcoal Steak House Inc., PN 0549378 (previously C-11218)**

Refund of member contributions from the Pension Plan for Supervisory & Executive Employees of Charcoal Steak House Inc., PN 0549378 (previously C-11218), in the aggregate amount of \$312,886.69 as at February 24, 1991 plus credited interest to the date of payment.



At the Commission meeting held November 23, 1995, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) The Society of Management Accountants of Canada Employees' (1965) Pension Plan, C-6591**

Refund of member required contributions from The Society of Management Accountants of Canada Employees' (1965) Pension Plan, C-6591, in the aggregate amount of \$125,479 as at January 1, 1995 plus credited interest to the date of payment.

At the Commission meeting held November 23, 1995, the Commission considered the application pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(b) Staff Pension Plan for Employees of M & A Candy Co. Ltd., PN 0365395 (previously C-12427)**

The Pension Commission of Ontario directed the Chair to send a letter to The Mutual Group advising them that the Pension Commission of Ontario cannot retroactively give consent to a refund of member required contributions, however the application will be placed on the file.

The Pension Commission of Ontario directed the Chair to send a letter to the North American Life concerning the apparent breaches of the Act and requesting an explanation from the insurance company.

**Applications Approved under section 105 and subsection 78(4) of the PBA -Extension of Time and Return of Overpayment**

At the Commission meeting held September 28, 1995, the Commission consented to an extension of time for filing an application and to the refund of an overpayment as follows:

**(a) Revised Pension Plan for Employees of Teleglobe Insurance Systems a division of Teleglobe Inc., PN 0906727 (previously C-19896)**

1. pursuant to section 105 of the Act, to extend the time limit specified under subsection 78(4) of the Act, to extend the deadline for filing the application;

2. pursuant to subsection 78(4) of the Act, to a refund from the Revised Pension Plan for Employees of Teleglobe Insurance Systems a division of Teleglobe Inc., PN 0906727 (previously C-19896), of \$568,307.81 overpayments made in 1992, 1993 and 1994.

The Commission directed the Registrar to note in the minutes that while an extension was granted in this situation, it should be clear that it was not automatically granted and this may not happen in other situations.

**(b) Pension Plan for Hourly Employees of Koehring Waterous Division of FMG Timberjack Inc., PN 0980102 (previously C-103348)**

1. pursuant to section 105 of the Act, to extend the time limit to its 1994 fiscal year for filing an application for the refund of overpayments;
2. pursuant to subsection 78(4) of the Act, to a refund from the Pension Plan for Hourly Employees of Koehring Waterous Division of FMG Timberjack Inc., PN 0980102 (previously C-103348), of \$160,000 overpayment made in 1993.

The Commission directed the Registrar to note in the minutes that while an extension was granted in this situation, it should be clear that it was not automatically granted and this may not happen in other situations.

At the Commission meeting held December 14, 1995, the Commission consented to an extension of time for filing an application and to the refund of an overpayment as follows:

**(a) Employee Retirement Plan of Doubleday Canada Limited, PN 0245431 (previously C-7363)**

1. pursuant to section 105 of the Act, to extend the time limit specified under subsection 78(4) of the Act, to extend the deadline for filing the application to the applicant's 1994 fiscal year;
2. pursuant to subsection 78(4) of the Act, to a refund to the applicant from the Employee Retirement Plan of Doubleday Canada Limited, PN 0245431 (previously C-7363), of \$145,336 overpayment made in 1993, plus investment earnings thereon to the date of payment.

## **Applications Approved under subsection 78(4) of the PBA - Return of Overpayment**

At the Commission meeting held December 14, 1995, the Commission consented pursuant to subsection 78(4) of the PBA to the refund of overpayments as follows:

### **(a) The Pension Plan for Group "E" Employees of Sceptre Investment Counsel Limited, PN 0593491 (previously C-15281)**

Refund to the applicant from The Pension Plan for Group "E" Employees of Sceptre Investment Counsel Limited, PN 0593491 (previously C-15281), of a \$4,718 overpayment made in 1992.

### **(b) The Pension Plan for Group "I" Employees of Sceptre Investment Counsel Limited, PN 0982785 (previously C-102963)**

Refund to the applicant from The Pension Plan for Group "I" Employees of Sceptre Investment Counsel Limited, PN 0982785 (previously C-102963), of a \$10,263 overpayment.

## **Applications Denied under subsection 78(4) of the PBA - Return of Overpayment**

At the Commission meeting held December 14, 1995, the Commission denied the applications pursuant to subsection 78(4) of the PBA to the refund of overpayments as follows:

### **(a) The Pension Plan for Group "L" Employees of Sceptre Investment Counsel Limited, PN 0986984 (previously C-104048)**

Denied the application of Sceptre Investment Counsel Limited pursuant to subsection 78(4) of the Act, for a refund from The Pension Plan for Group "L" Employees of Sceptre Investment Counsel Limited, PN 0986984 (previously C-104048), of an overpayment made in 1992.

The reasons for the decision are as follows:

The amount of the overpayment refund requested is not clear. The sole plan member has signed two separate letters of consent each specifying a different amount to be refunded. The Commission is therefore, unable to give its approval.

### **(b) The Pension Plan for Group "K" Employees of Sceptre Investment Counsel Limited, PN 0691048 (previously C-103854)**

Denied the application of Sceptre Investment Counsel Limited pursuant to subsection 78(4) of the Act, for a refund of an \$11,500 overpayment from The Pension Plan for Group "K" Employees of Sceptre Investment Counsel Limited, PN 0691048 (previously C-103854). The reasons for the decision are as follows.

The application does not satisfy any requirements of the Act, Regulations and Commission policies in respect of such applications. The actuarial report as at January 1, 1992 (dated December 10, 1992) revealed that the plan was in a surplus position, however a subsequent actuarial report, also as at January 1, 1992 (dated June 10, 1993), indicated that the plan was in a deficit position as at January 1, 1992.

## **Pension Benefits Guarantee Fund ("PBGF") – Notice of Proposed Declarations**

On June 29, 1995, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan: **Erie Industries (1987) Inc. Employees Retirement Plan, PN 0577320 (previously C-14511)**

On November 23, 1995, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan: **Pension Plan for Designated Executive Employees of Libbey-St. Clair Limited, PN 0692756 (previously C-103741)**

## **Declaration that the PBGF Applies to Pension Plans**

On June 29, 1995, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan: **Retirement Income Plan for Salaried Employees of Savage Shoes Limited and Associated Companies, PN 0440420 (previously C-18831)**

On September 28, 1995, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan: **Pension Plan for Key Executive of Atwell Fleming/Young Ltd., C-16673**

**Allocations, subsection 34(7) of Regulation 909 under the PBA**

On May 25, 1995, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**(a) Pension Plan for Salaried Employees of Provincial Crane Inc., PN 0957514 (previously C-102257)**

Allocate and pay an amount not to exceed \$165,000 to provide for (together with the assets of the Plan) the benefits determined under section 34 of the Regulations (estimated to be \$115,751 at April 1, 1995).

**(b) Pension Plan for Employees of Maybank Foods Inc., (C-19298)**

Allocate and pay an amount not to exceed \$8,000,000 to provide for (together with the assets of the Plan) the benefits determined under section 34 of the Regulations (estimated to be \$6,957,000 at July 1, 1995).

On June 29, 1995, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**(a) Pension Plan for Hourly Employees of Savage Shoes Limited and Associated Companies, PN 0440438 (previously C-17059)**

Allocate and pay an amount not to exceed \$160,000 which, together with the assets of the

Plan, will provide the benefits determined under section 34 of the Regulations (estimated to be \$125,700) and pay the reasonable administration costs of the administrator.

**(b) Pension Plan for Employees of Canada Decal Inc., C-19796**

Allocate and pay an amount not to exceed \$650,000 which, together with the assets of the Plan, will provide the benefits determined under section 34 of the Regulations and pay the reasonable administration costs of the administrator.

On July 27, 1995, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**TAG Apparel Group Inc. Pension Plan for Salaried Employees of Penmans Apparel Inc., C-101674**

Allocate and pay an amount not to exceed \$325,000 which, together with the assets of the Plan, will provide the benefits determined under section 34 of the Regulations and pay the reasonable administration costs of the administrator.

On September 28, 1995, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**Pension Plan for Key Executive of Atwell Fleming/Young Ltd., C-16673**

Allocate and pay an amount not to exceed \$65,000 which, together with the assets of the Plan, will provide the benefits determined under section 34 of the Regulations from the Pension Benefits Guarantee Fund to the Pension Plan for Key Executive of Atwell Fleming/Young Ltd., C-16673.



The Commission directed the Registrar to advise the Administrator that when requesting that the Pension Benefits Guarantee Fund apply, the administrator should draw to the Commission's attention the failure of the employer to make required contributions which was not exonerated by the later valuation showing a surplus, especially as the valuation was based on weakened assumptions.

On December 14, 1995, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**(a) Pension Plan for Hourly Employees of Jaeger Canada Equipment Ltd., PN 0599324 (previously C-15969)**

Allocate and pay an amount not to exceed \$160,467 to provide, together with the Ontario assets of the Pension Plan for Hourly Employees of Jaeger Canada Equipment Ltd., PN 0599324 (previously C-15969), for the benefits determined under section 34 of the Regulation.

**(b) Pension Plan for Union Employees of the Rexdale Plant of Chromalox Inc., (C-103203)**

Allocate and pay an amount not to exceed \$400,000 to provide, together with the Ontario assets of the Pension Plan for Union Employees of the Rexdale Plant of Chromalox Inc., C-103203, for the benefits determined under section 34 of the Regulation.



### Contacts for General Enquiries

AIR/PBGF Filings Enquiries	Gina Potter (fees, penalties, interest) Rose-Anne Drakes (replacement forms)	314-0672 314-0585
Communications Enquiries (Electronic and Print Publications)	Judith Chalmers	314-0699
Issues and Correspondence, FOIPOP* Requests & Media Enquiries	Debra Bain	314-0605
Policy Enquiries	Cynthia James Jules Huot (bilingual) Jerry Loterman	314-0702 314-0613 314-0561
Registrar to the Commission	Sharon Carr	314-0624
Secretary to the Chair and the Superintendent of Pensions	Ann Marie Gumbs	314-0628

Written FOIPOP requests should be sent to:

Mr. Ron Ward, Assistant Co-ordinator, Information and Privacy Office, Ministry of Finance,  
250 Yonge Street, 30th Floor, Toronto, ON M5B 2N7. Phone 416-325-8369 or fax 416-327-0941.

### Pension Officers and Analysts - 1996 Plan Allocation List

Allocation	Officer	Tel.
<b>Agriculture/Mining/Const/Fin</b>	<b>Alain Malaket</b>	<b>314-0609</b>
Public Administration	Larry Falconer	314-0610
<b>Trade/Commercial</b>	<b>Stanley Chan</b>	<b>314-0635</b>
Rubber/Plastics	David Allan	314-0612
<b>Transportation Equipment</b>	<b>Larry Martello</b>	<b>314-0587</b>
Food/Beverages	Penny McIlraith	314-0594
<b>Textiles/Paper</b>	<b>Jaan Pringi</b>	<b>314-0586</b>
Primary Metals/Machinery	Rosemine Jiwa-Jutha	314-0611
<b>Printing/Publishing/Misc.Mfg.</b>	<b>Grant Ardern</b>	<b>325-3784</b>
Electrical	John Graham	314-0647
<b>Non-Metallic/Chemicals</b>	<b>Mark Henry</b>	<b>314-0584</b>
A-BRI	Irene Mook-Sang	314-5957
<b>BRO-COM</b>	<b>Steve Young</b>	<b>314-0646</b>
CON-EZZ	Simon Laxon for Elizabeth Addo (on leave)	314-5928
<b>F-HAZ</b>	<b>Amin Purshottam</b>	<b>314-0552</b>
HEA-KMZ	Lynn Barron	314-0639
<b>KNA-MOQ</b>	<b>Elizabeth Carter</b>	<b>314-0604</b>
MOR-PNZ	Gino Marandola	314-0698
<b>POL-SHE</b>	<b>Maureen Barber</b>	<b>314-0645</b>
SHI-TORO	Sandy Cook-Malloy	314-0636
<b>TORR - #</b>	<b>Lynn Barron</b>	<b>314-0639</b>
Allocation	Analysts	Tel.
A-BAU	John Staric for Margaret Fennell (on leave)	314-0596
<b>BAV-CANADA</b>	<b>Marion Gassenauer</b>	<b>314-0690</b>
CANADI-COK	John Staric for Margaret Fennell	314-0596
<b>COL-FLO</b>	<b>Claude De Souza</b>	<b>314-0608</b>
FLU-HAL	John Staric for Margaret Fennell	314-0596
<b>HAM-JAL</b>	<b>Merle Corbie</b>	<b>314-0637</b>
JAM-LEV	John Staric for Margaret Fennell	314-0596
<b>LEW-ONT</b>	<b>Claude De Souza</b>	<b>314-0608</b>
ONU-RAL	Marion Gassenauer	314-0690
<b>RAM-THA</b>	<b>Merle Corbie</b>	<b>314-0637</b>
THE-VUL	Marion Gassenauer	314-0690
<b>VUM -#*</b>	<b>Merle Corbie</b>	<b>314-0637</b>



*Do you ever have to call the PCO for a replacement AIR?*

*Does this frustrate you?*

If so, you should know that our research shows that the AIR has probably been delivered on time to your company or firm, but **no specific contact name was provided on the AIR as requested**. The result is that the AIR goes astray and your calls and complaints begin.

This administrative breakdown is costly for everyone. For pension practitioners, there's the prospect of delays, possible late fees and general frustration. Within government, we face the prospect of doing the work twice and wasting postage costs...and we get frustrated too.

In future, you will receive AIRs with imprinted envelopes that read:

---

*Time-sensitive compliance documents enclosed.*

*Open immediately and deliver to the appropriate person.*

*Avoid paying late fees.*

---

Always provide a contact name on the AIR. We can handle it - even if the contact name changes from year to year. It is important information.

For further assistance, please refer to the article on page 53  
*Who to Call for Help with AIRs and PBGF Assessment Certificates*

We take pride in doing our work well and efficiently. Your co-operation is needed and appreciated.

Please forward undeliverable copies to:

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# THE PENSION COMMISSION OF ONTARIO

# BULLETIN

CA20N  
TR 600  
-B74

Fall - Winter 1997

**DETAILS ON THE  
NEW PCO INFORMATION  
SERVICES PROGRAM  
WILL BE MAILED  
SOON**

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Pension  
Commission  
of Ontario

Commission des  
régimes de retraite de  
l'Ontario

Please refer to the centre spread of this issue for a description of the new information services program to be offered by the Pension Commission of Ontario. The *PCO Bulletin* is published by the Pension Commission of Ontario, 250 Yonge Street, 29th Floor, Toronto, ON M5B 2N7. You can reach us by phone at 416-314-5993 or by fax at 416-314-0650.



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*The Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 (as amended), the terms of the pension plan and the policy and practices of the PCO should be considered in determining specific legislative and other legal requirements and professional advice should be sought.*

ISSN 1180-1565



## Announcements

### Appointment of Director, Policy and Research Branch

On January 15, 1997, the Superintendent of Pensions announced the appointment of Mr. Nurez Jiwani as Director of the Policy and Research Branch and Ms. Pauline Dawson as Acting Director of the Pension Plans Branch. These changes were necessitated by the reassignment of Mr. Bruce Macnaughton to the position of Director of the Intergovernmental Finance Policy Branch in the Ministry of Finance.

### PCO Information Services Program To Be Launched in the Spring

The PCO is planning to launch its new information services program sometime this spring. Everyone who receives the *PCO Bulletin* will receive a flyer which includes details about the products and services and an order form. Subscribers will enjoy access to an expanded package of material in print and electronic formats. The PCO remains the authoritative source for information relating to regulatory requirements for pension plans, decisions of the Commission and amendments to the Regulations under the *Pension Benefits Act*.

Details about the the *PCO Bulletin*, *PCO Manuals*, the *PCO Web Site*, Start-Up CD ROM and the *Office Consolidation of the Pension Benefits Act* and Regulations will be provided in the flyer soon. Some highlights and benefits of the *PCO Web Site* are discussed below.

#### Introducing the *PCO Web Site*

The *PCO Web Site* is expected to be operational in spring, 1997 and will be available at the following URL (Uniform Resource Locator) <http://www.gov.on.ca/pensions>. The new medium will offer significant added value to subscribers. It promises to enhance productivity and improve subscribers' ability to respond to the needs of clients and stakeholders quickly and effectively. Subscribers will gain access to the PCO's information database including all policies and procedures since 1990, decisions of the Commission since 1988, all amendments to the Regulations and the updated version of the Act and Regulations. Other helpful features include e-mail notification of uploads and personal notification of updates since last log-in. Subscribers will be able to download the PCO's information database and, using their own system's search engines and other software

features, they may integrate and manage the data to suit their needs. It is expected that the *PCO Web Site* will become a popular and preferred communications medium.

#### Formats

All files will be provided in three versions in order to be universally accessible. In addition to HTML, which is the language for viewing text on-line on the Internet (it is downloadable), the PCO will provide all files in WordPerfect 5.1+ for DOS, Microsoft Word 6.0 for Windows and Macintosh and, WordPerfect 6.1 for Windows.

#### Start-Up CD ROM

To facilitate start-up, *PCO Web Site* subscribers may purchase a CD ROM which contains files formatted in three versions and updated to 1997. Instead of spending time and resources downloading large volumes of data from the site, subscribers can be up and running quickly. The CD ROM provides an electronic base line which may be kept up-to-date by downloading announcements and files from the web site as they occur.

#### Crown Copyright

Prospective subscribers should be aware that the *Pension Benefits Act* and Regulations and all information published by the PCO are protected by Crown copyright and all rights are reserved. Copyright will be asserted on all publications whether in hard copy or electronic formats. Any suspected infringements such as republication, redistribution or resale to third parties will be referred to the Queen's Printer for enforcement action.

Having said this, the PCO wishes to encourage the appropriate use of PCO material with acknowledgement for personal use or for an individual's business use. Any questions on this matter should be referred to Judith Chalmers at 416-314-0699.

### Telix System - Interim Communications Arrangement

Until the *PCO Web Site* is operational, the PCO will continue to use its own "BBS" to inform stakeholders about regulatory developments. The communications software is known as "telix" and stakeholders can dial up anytime, 24 hours a day. The service is free to anyone calling from the Toronto area but long distance

charges will apply to others. The BBS includes only 1996 and 1997 announcements and files uploaded during the same period.

#### Steps for Accessing the Telix System

The PCO is using a US Robotics Sportster fax modem transmitting data at a rate of 28.8K.

- 1 Dial 416-325-9263
- 2 Callers will be prompted to enter identifying information (enter all information requested, including company name) and a confidential password. The password should be specific to each caller and should not be shared.
- 3 Callers will view a main menu and should select "go to file system" to access PCO file menu.
- 4 The PCO file menu contains three areas including Pension News, Pension Policies and Tribunal Decisions. From the file menu, select the desired file area using the "change current area" option.
- 5 Once in the selected file area, callers should choose "file list" to view an index listing of the files available to download. Then select "download a file" and enter the name of the file. Please disregard the option to view files on-line. The function is not operational.

Most policies are available in two versions: self-extracting WordPerfect 5.1 + for DOS files (identified by the .EXE extension) and ASCII text files (identified by the .TXT extension). More recent files are not zipped.

If you experience technical difficulties, please report to Judith Chalmers at 416-314-0699 or Anne Balfour at 416-314-0701 and describe the nature of the problem.

#### Correction

In the Winter-Spring 1996 issue of the *PCO Bulletin*, we referenced a procedure P500-400 "Surplus Refund Applications on Wind Up - Transmittal to the Commission". This reference was in error. We regret any confusion it may have caused.

#### Appointment of Administrators of Defined Contribution Pension Plans of Insolvent Companies

The Canadian Life and Health Insurance Association Inc. (the "CLHIA") and the Superintendent of Pensions have developed a standard service agreement which will be used for the appointment by the Superintendent of member companies of the CLHIA as administrators to wind up defined contribution pension plans of insolvent companies. The development of the standard service agreement is a result of several working group sessions held amongst the staff of the CLHIA, its member companies and the Pension Commission of Ontario.

#### AIR and PBGF Pre-Printed Forms Changes to Mailing Schedule

It has been the PCO's practice to mail AIR and PBGF forms to plan administrators six months prior to the filing due date for defined contribution plans and nine months prior to the filing due date for defined benefit plans.

Our experience has shown that the forms are sometimes misplaced because they are received too far in advance of the filing due date. This results in calls to PCO staff for duplicate copies of the forms to be issued.

Therefore, the PCO is changing its practice for mailing AIR and PBGF forms. In future, both forms will be issued approximately three months in advance of the filing due date. This applies to defined contribution and defined benefit plans.

If there has been a change in consultants or agents preparing these forms since the last filing, the forms should be redirected to the appropriate person at the new firm in a timely fashion to avoid late fees and penalties. A new contact name and company information must be provided on the current year's filing.

## Enforcement Matters

### Ongoing Cases under the PBA and Regulations

*The original announcements concerning the following two cases were uploaded to the PCO's Telix Computer System on June 5, 1996. The announcements have been amended.*

#### Thorco Equipment Inc.

On May 31, 1996, charges were laid against Thorco Equipment Inc. ("Thorco") as employer and administrator of The Thorco Equipment Inc. and Affiliated Companies Pension Plan. Charges were also laid against a director and officer of Thorco. The charges relate to:

- failure to remit funds to the pension plan in accordance with s. 55(2) of the PBA
- failure to comply with a request for information made by the Superintendent of Pensions under s. 98 of the PBA
- failure to file a valuation report in accordance with s. 14(1) and 14(7) of the Regulation
- failure to file annual information returns in accordance with s. 20(1) of the PBA
- failure to file financial statements in accordance with s. 76(1) and 76(4) of the Regulation

The matter is scheduled for March 4, 1997 in the Ontario Court (Provincial Division), Courtroom L, 60 Queen Street West at 9:00 a.m.

#### Mimik Industries Inc.

On April 18, 1996, charges were laid against Mimik Industries Inc. ("Mimik"), as an employer required to make contributions under its pension plan, and Mimik's President. The charges relate to a failure to remit contributions to the pension plan in accordance with clause 55(2)(a) of the Act. The plan was not funded for the period January 1991 to the present.

The matter is scheduled for January 7, 1997 in the Ontario Court (Provincial Division), Courtroom L, 60 Queen Street West at 9:00 a.m.

#### Maysfield Property Management (1987) Inc.

On August 15, 1996, charges were laid against Maysfield Property Management (1987) Inc. ("Maysfield") as employer and administrator of the pension plan registered as Pension Commission registration number PN0103046. Charges were also laid against a director and officer of Maysfield. The charges relate to:

- failure to comply with a request for information made by the Superintendent of Pensions under s. 98 of the PBA,
- failure to file a valuation report in accordance with ss. 14(1) and 14(7) of the Regulation,
- failure to file annual information returns in accordance with s. 20(1) of the PBA, and
- failure to file financial statements in accordance with s. 76(1) and 76(4) of the Regulation.

The matter is scheduled for February 25, 1997 in the Ontario Court (Provincial Division), Courtroom L, 60 Queen Street West at 9:00 a.m.

### Cases Concluded Under the PBA and Regulations

#### Union Drawn Steel Company Limited

*This announcement was uploaded to the BBS on March 27, 1996*

On March 19, 1996, charges were laid against Union Drawn Steel Company Limited ("UDS"), as administrator of the company's hourly pension plan, and a former officer of UDS. The charges relate to:

- failure to remit contributions to the pension plan in accordance with clause 55(2)(a) of the Act,
- failure to ensure that the pension plan was administered in accordance with the Act and Regulation under subsections 19(1) and 19(3) of the Act,
- failure to apply to the Superintendent for registration of 1990 and 1991 plan amendments in accordance with section 12 of the Act,
- failure to file valuation reports with respect to the plan amendments in accordance with subsection 20(2) of the Act and subsections 3(1) and 3(2) of the Regulation,



- failure to file triennial valuation reports in 1988 and 1991 in accordance with subsection 20(2) of the Act and subsection 18(1) of the Regulation,
- failure to file annual information returns for the years 1988 to 1991,
- failure to file audited financial statements in accordance with subsections 76(1), 76(2) and 76(4) of the Regulation, and
- failure to file a statement of investment policies and goals in accordance with subsection 67(5) of the Regulation.

The first appearance was on May 7, 1996 at 9:00 a.m. in Courtroom C, Ontario Court (Provincial Division), 60 Queen Street West in Toronto followed by a second appearance on October 29, 1996.

*This announcement concerning the Union Drawn Steel Company Limited was uploaded to the PCO's Telix Computer System on October 30, 1996.*

On October 29, 1996, a former director and vice president-finance of Union Drawn Steel Company Limited ("UDS") pleaded guilty to four counts under s. 110(3) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8.

These counts related to plan amendments made by UDS in 1990 and 1991 which increased contributions and created or changed a going concern unfunded liability and a solvency deficiency. UDS failed to file the amendments with the PCO and failed to file valuation reports within 8 months of the date of those plan amendments as required by ss. 3(1) and 3(2) of R.R.O. 1990, Reg. 909.

The defendant knew that UDS did not file the amendments or the reports and he took no steps to cause UDS to make those filings. The defendant was fined \$2,500 on each count for a total fine of \$10,000. UDS is currently in bankruptcy and the charges against UDS were withdrawn on October 29, 1996.

*The following announcements were uploaded to the PCO's Telix Computer System on May 14, 1996.*

#### Forum Sport Inc.

On April 30, 1996, in the Ontario Court (Provincial Division), the defendants, Forum Sport Inc. and the former President and Director of Forum Sport, Inc., pleaded guilty to all the charges laid under the *Pension Benefits Act*. The Court suspended the sentence against both defendants and ordered the former President and Director to make restitution to the pension fund in the amount of \$8,429.21. Restitution consisted of the total employer and employee contributions not remitted to the fund, plus interest, for the time periods: 1989 to September 1991 and October 1, 1993 to December 31, 1994.

#### Peoples Jewellers Limited

On April 29, 1996, a former officer and director and, a former officer of Peoples Jewellers pleaded guilty to charges under the Act and Regulations. The officer was fined \$5,000 and the director and officer of the company was fined \$10,000. The charges against Peoples Jewellers Limited were withdrawn.

The charges were under s. 62 of the Act and s. 70(1) of the Regulations and related to investments made with the assets of the pension fund in situations where the officers were aware that the percentage of Peoples' shares held by the fund exceeded the 10 per cent limit in s. 70(1) of the Regulation. This caused a loss to the pension fund when the employer was petitioned into bankruptcy.

#### The Pritchard Andrews Company of Ottawa Limited

On April 25, 1996, the Ontario Court (Provincial Division) sentenced the defendants, a director and officer of the company and the Pritchard Andrews Company of Ottawa Limited, to make restitution to the pension fund in the amount of \$26,400. This amount represents the total employee contributions deducted but not remitted to the fund, plus interest, for the following time periods: February 1, 1986 to December 15, 1987, October 1, 1988 to December 22, 1990 and May 1, 1991 to January 1, 1993.

For more information about these matters, please refer to the Winter-Spring 1996 issue of the *PCO Bulletin* or the item indexed as E100-001.

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## Applications Received Prior to January 1, 1996 - Procedures for Resolution

In the Winter-Spring 1996 issue of the *PCO Bulletin*, we published a procedure P500-001 (page 10) "Communications Between the PCO and Plan Administrators" which provided a new basis for the review of applications to the Commission or the Superintendent. That procedure was designed to improve both service and communications among the parties involved in the application.

The question has arisen as to how this procedure applies to applications filed prior to January 1, 1996 where correspondence between PCO staff and the parties has already occurred. Applicants also wish to know the priority given to applications filed prior to January 1, 1996.

### For Applications to the Commission

PCO staff will prepare and submit a memorandum to the Commission. It will be based on all information on file including any prior requests made by PCO staff for additional information for which a response was provided or remains outstanding. Applicants will receive a copy of this memorandum and will have an opportunity to make further submissions to the Commission in accordance with the current procedure (P500-001).

### For Applications to the Superintendent

PCO staff will write a final letter to the plan administrator summarizing concerns or issues and requesting a response within sixty (60) days. After the sixty days have passed, and except for any legal or actuarial issues which may be identified, PCO staff will forward the application to the Superintendent of Pensions for a decision based on information on file (including any responses received from the applicant to the final letter).

Since the summer, PCO staff have begun a special one-year initiative to resolve all outstanding applications filed prior to 1996, starting with the oldest applications. It is the PCO's objective to resolve all applications filed prior to 1996 by August, 1997.

## Human Rights Commission Decision on the Definition of Spouse

In the Matters of: *Sims v. Attorney General of Ontario* and *Dwyer v. Municipality of Metropolitan Toronto*

On September 27, 1996, a Board of Inquiry of the Human Rights Commission heard the above complaints which arose out of the denial of employment benefits to same-sex spouses of employees of the Municipality of Metropolitan Toronto. Although originally relating exclusively to extended health care benefits, other issues were raised including an allegation that the definition of "spouse" under the *Pension Benefits Act* (the "PBA") is contrary to the equality rights guaranteed under section 15 of the *Charter of Rights and Freedoms*.

One complainant sought an order from the court that OMERS provide an interim offside arrangement which would provide that a survivor benefit be provided within the pension plan as soon as it is possible under the *Income Tax Act* (Canada) ("ITA (Canada)").

The Board of Inquiry found that the opposite-sex definition of "spouse" in a number of statutes including the *ITA* (Canada), the *Human Rights Code* and the *PBA* violates the *Charter of Rights and Freedoms*. The Board made a contingent order that, when the definition of "spouse" in the *ITA* (Canada) changes by amendment or judicial decision to permit pension benefits to be extended to same-sex spouses without deregistration of pension plans, the definition of "spouse" in the *PBA* would be read to include same-sex spouses. The Board made a number of other orders but declined to order that the OMERS provide survivor benefits immediately through an offside plan.

The Attorney General of Ontario has filed a Notice of Appeal.

## Annual Rates of Interest Payable on Overdue Annual Filing Fee Payments

Cheques are payable to the Minister of Finance. The registration number of the pension plan should be recorded on the cheque.

Apr. 1/88 - Sep. 30/88	10%	Oct. 1/93 - Dec. 31/93	6%
Oct. 1/88 - Mar. 30/89	11%	Jan. 1/94 - Mar. 31/94	6%
Apr. 1/89 - Sep. 30/89	12%	Apr. 1/94 - Jun. 30/94	6%
Oct. 1/89 - Mar. 31/90	14%	Jul. 1/94 - Sep. 30/94	7%
Apr. 1/90 - Sep. 30/90	14%	Oct. 1/94 - Dec. 31/94	8%
Oct. 1/90 - Mar. 31/91	15%	Jan. 1/95 - Mar. 31/95	7%
Apr. 1/91 - Sep. 30/91	13%	Apr. 1/95 - Jun. 30/95	9%
Oct. 1/91 - Mar. 31/92	10%	Jul. 1/95 - Sep. 30/95	10%
Apr. 1/92 - Sep. 30/92	8%	Oct. 1/95 - Dec. 31/95	8%
Oct. 1/92 - Mar. 31/93	7%	Jan. 1/96 - Mar. 31/96	8%
Apr. 1/93 - Jun. 30/93	7%	Apr. 1/96 - Jun. 30/96	8%
Jul. 1/93 - Sep. 30/93	6%	Jul. 1/96 - Sep. 30/96	7%
		Oct. 1/96 - Dec. 31/96	7%

## Monthly Rates of Interest\* Payable on Overdue Guarantee Fund Assessment Payments

Cheques are payable to the Pension Benefits Guarantee Fund. The registration number of the pension plan should be recorded on the cheque.

Year	% Jan	% Feb	% Mar	% Apr	% May	% Jun
1987	12.25	12.25	11.75	12.25	12.50	12.50
1988	12.75	12.75	12.75	13.25	13.25	13.75
1989	15.25	15.75	16.50	16.50	16.50	16.50
1990	16.50	17.25	17.25	17.75	17.75	17.75
1991	15.25	14.25	14.25	13.75	12.75	12.75
1992	10.50	10.50	11.25	10.75	10.50	10.00
1993	9.75	9.50	9.00	9.00	9.00	9.00
1994	8.50	8.50	9.25	9.75	9.75	11.00
1995	12.25	12.50	12.75	12.75	12.25	11.75
1996	10.25	10.00	9.75	9.50	9.50	9.50

Year	% Jul	% Aug	% Sep	% Oct	% Nov	% Dec
1987	12.50	13.00	13.00	12.75	12.75	12.75
1988	13.75	14.25	14.75	14.75	14.75	15.25
1989	16.50	16.50	16.50	16.50	16.50	16.50
1990	17.75	17.25	16.75	16.75	16.25	15.75
1991	12.75	12.75	12.50	11.75	11.50	11.00
1992	9.75	9.50	9.25	10.75	12.75	10.25
1993	8.75	8.75	8.75	8.75	8.50	8.50
1994	10.50	10.25	10.00	10.00	10.00	11.00
1995	11.25	11.00	11.00	11.00	10.75	10.50
1996	9.25	8.75	8.75	8.00	7.75	7.75

\* Interest rates are determined based on the CANSIM B14020 rate plus 3%.



# **1997 Maximum Annual Withdrawal Amount Table for an Ontario Life Income Fund (LIF)**

Age at Jan. 1 1997	New Age During 1997	Years to End of Year Age 90 is Attained	Maximum Withdrawal as a % of the LIF Balance at Jan. 1, 1997*
48	49	42	6.61845%
49	50	41	6.65470%
50	51	40	6.69355%
51	52	39	6.73523%
52	53	38	6.77998%
53	54	37	6.82807%
54	55	36	6.87979%
55	56	35	6.93549%
56	57	34	6.99551%
57	58	33	7.06029%
58	59	32	7.13027%
59	60	31	7.20598%
60	61	30	7.28801%
61	62	29	7.37703%
62	63	28	7.47379%
63	64	27	7.57917%
64	65	26	7.69417%
65	66	25	7.81993%
66	67	24	7.95781%
67	68	23	8.10938%
68	69	22	8.27647%
69	70	21	8.46127%
70	71	20	8.66639%
71	72	19	8.89496%
72	73	18	9.15079%
73	74	17	9.43854%
74	75	16	9.76399%
75	76	15	10.13440%
76	77	14	10.56222%
77	78	13	11.06077%
78	79	12	11.64776%
79	80	11	12.34741%

\* The maximum annual withdrawal amount percentage is calculated on the basis of a twelve-month fiscal year to December 31, 1997 using the following interest assumptions:

- (1) the CANSIM B14013 rate for December, 1996 (6.77%) for the first 15 years, and
- (2) 6.00% for the years remaining to the end of the year in which the planholder attains 90 years of age. (Assumptions to age 90 are for the purpose of the calculation only. The balance of a LIF must be used to purchase a life annuity by the end of the year in which the planholder attains 80 years of age.)

Percentages shown must be prorated for the initial fiscal year if less than twelve months. Part of a month is treated as a full month.

## Policies and Procedures

<b>SECTION</b>	Assets
<b>INDEX NO.</b>	A700-226
<b>TITLE</b>	Partial Asset Transfers under Section 81 - Superintendent's Consent Required (replaces A700-225)
<b>APPROVED BY</b>	The Pension Commission of Ontario
<b>PUBLISHED BBS</b>	October 29, 1996
<b>PUBLISHED</b>	Bulletin 6/4 (Fall - Winter 1997)
<b>EFFECTIVE DATE</b>	When Published

1. (1) This policy replaces Policy A700-225 (Superintendent's Consent Required for Asset Transfers Under Section 81(8)) as of the effective date of the policy.
- (2) Applications that are subject to section 81 of the *Pension Benefits Act*, R.S.O. 1990, (the "Act") and that provide for a combination of full and partial asset transfers will be considered on the basis of this policy and Policy A700-251 (Full Asset Transfers under Section 81 - Superintendent's Consent Required).
2. Where there is a proposal to transfer a portion of the assets from the pension fund of a pension plan registered in Ontario to the pension fund of another pension plan, and the transfer is not subject to either section 42 or section 80 of the Act, the transfer is subject to section 81 of the Act. (Transfers from pension plans registered in other jurisdictions are subject to the legislation of the applicable jurisdiction.)
3. Where section 81 applies, no transfer of assets may be made without the prior consent of the Superintendent under either of subsections 81(4) or 81(8) of the Act. This policy has been developed to assist in the preparation of applications for the Superintendent's consent.
4. (1) The Superintendent's prior consent to any asset transfer which affects a group of plan members who have not made transfer elections under section 42 of the Act must be obtained in accordance with either of subsections 81(4) or 81(8) of the Act, unless the transfer is subject to subsection 80(10) of the Act.
- (2) Generally, this policy does not apply to asset transfers made in respect of individual plan members pursuant to a reciprocal transfer agreement. A reciprocal transfer agreement may be a separate filed document or may be contained in other filed documents that create and support a pension plan. Such an agreement might cover, for example, asset transfers respecting the reclassification of hourly employees to salaried status.

### Terms

5. (1) For the purpose of this policy, the term "exporting plan" refers to each pension plan from which a partial asset transfer is proposed, and prior to any transfer(s) taking place, to the pension plan that will receive the assets. The term "importing plan" refers to the pension plan to which the assets will be transferred, after the transfers have taken

place. (For example, if a transfer proposal affects five pension plans, there are five “exporting plans” for the purpose of this policy. Assuming that assets are transferred from four pension plans at the effective date of transfer, all or a portion of the assets of each of five exporting plans will be held in the pension fund of the “importing plan”.)

- (2) A new pension plan that has no members, former members, assets or liabilities prior to a transfer of assets may be established as the “importing plan”. In such circumstances, the example shown in subsection (1) above would refer to four “exporting plans” and one “importing plan”.

6. (1) The following terms shall have the meanings prescribed by section 1 of the regulations under the Act:

- (a) actuarial gain;
- (b) going concern assets;
- (c) going concern liabilities;
- (d) going concern valuation;
- (e) going concern unfunded liability;
- (f) solvency assets;
- (g) solvency deficiency;
- (h) solvency liabilities;
- (i) solvency liability adjustment;
- (j) special payment;
- (k) transfer ratio.

- (2) The meaning of the terms used in this policy which are not defined under the Act or the Regulations is as follows:

- (a) “effective date of transfer” means the effective date of the amendment(s) which give rise to the transfer(s) of assets and liabilities from the exporting plan(s) to the importing plan. Unless otherwise indicated in this policy, all values, amounts and ratios are to be determined at the effective date of transfer;

- (b) “reports” for exporting plans that provide defined benefits are prepared in accordance with sections 13 and 14 below;

- (c) the “report” for the importing plan is prepared in accordance with sections 13, 15 and 16 below;

- (d) “solvency excess” means the excess determined in accordance with subsection 5(17) of the regulations;

- (e) “transferred members” means those members and former members of an exporting plan who cease membership in the exporting plan and become members and former members of an importing plan as a result of a transfer of a portion of the assets and liabilities of the exporting plan to the importing plan;

- (f) “transfer assets” means the market value of the assets transferred from an exporting plan to the importing plan as at the effective date of transfer;

- (g) “residual members” means those members and former members of an exporting plan who are not transferred members, and who continue to be members and former members under the residual exporting plan;

- (h) “residual exporting plan” means the remaining portion of each exporting plan after a portion of the assets and liabilities has been transferred;

- (i) “residual assets” means the market value of the assets remaining in a residual exporting plan immediately following the transfer of the transfer assets;

- (j) “reports” for residual exporting plans that provide defined benefits are prepared in accordance with sections 14 and 16 below.

- (k) “solvency valuation” means a valuation performed in accordance with section 17 of the regulations.

### The Application

7. An application for the Superintendent’s consent to transfer a portion of assets should include all of the information, statements or reports, as the case may be, identified in this policy.



8. The application should identify by name and registration number, the exporting plans affected by the transfer proposal and the transfer assets for each applicable exporting plan.
9. Copies of the notices given pursuant to section 21 of this policy should also be included along with one certification by the administrator(s) for each notice transmitted. Certification of the date on which the notice was last transmitted, the persons or bodies to whom notice was transmitted, and the method of delivery should be provided.

### **Obtaining Consent**

10. (1) In accordance with subsection 81(5) of the Act, the Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members (the "benefits").
- (2) The Superintendent will consider each application on its own merits. Guidelines which the Superintendent may consider in deciding each application are identified in this policy. The Superintendent may consider other proposals which differ from the guidelines set out in this policy. The applicant should justify the need for any departures from the guidelines, and must be able to demonstrate how the benefits are protected under the circumstances.
11. The Superintendent may decide that the benefits are not protected unless:
  - (1) for each exporting plan from which a portion of the assets and liabilities are to be transferred,
    - (a) where the solvency liabilities of the exporting plan are greater than or equal to the solvency assets of the plan, the ratio of the transfer assets to the residual assets is equal to the ratio of the solvency liabilities for the transferred members to the solvency liabilities for the residual members; or

- (b) (i) where the solvency liabilities of the exporting plan are less than the solvency assets of the plan, the ratio of the transfer assets to the residual assets is equal to the ratio of the going concern liabilities for the transferred members to the going concern liabilities for the residual members, and
- (ii) the transfer assets are not less than the solvency liabilities allocated to the transferred members, and
- (iii) the residual assets are not less than the solvency liabilities allocated to the residual members; and
- (2) the transfer ratio of the importing plan is at least equal to the highest transfer ratio of the exporting plans, but need not exceed 1.0; and
- (3) the transfer ratio of each residual exporting plan is at least equal to the transfer ratio of the corresponding exporting plan, but need not exceed 1.0; and
- (4) where the report(s) for the importing plan or any of the residual exporting plans indicates that special payments are required, and the sum of the scheduled amounts of amortization payments for any month under the importing plan and the residual exporting plans is less than the sum of the corresponding scheduled amounts of monthly special payments required for all exporting plans immediately prior to any asset transfers, except as adjusted in accordance with section 16 below; and
- (5) no solvency liability adjustment is used in the solvency valuations of the exporting plans, the residual exporting plan(s), and the importing plan where the assets are transferred in the form of cash.

12. Where a transfer of a portion of the assets from a pension plan that provides defined benefits to a multi-employer pension plan, or to a pension plan that provides defined benefits where the obligation of an employer to contribute to the plan is limited to a fixed amount set out in a collective agreement is proposed, the Superintendent may decide that the benefits of the transferred members are not protected unless:

- (a) annuities are purchased, or
- (b) the benefits are protected in some other way that is acceptable to the Superintendent.

### **Statements/Actuarial Reports**

#### Pension Plans that Provide Defined Benefits

13. For the purpose of sections 14, 15 and 16 below, the actuarial methods and assumptions used in preparing the solvency valuations for the exporting plans and the importing plan should be on a consistent basis. (For example, the economic assumptions underlying the actuarial bases for the solvency valuations should not differ.)

14. (1) A report should be prepared for each of the exporting plans as at the effective date of transfer by a person authorized under the regulations under the Act.

(2) A report for an exporting plan should identify:

- (a) the market value of the assets;
- (b) the going concern assets, going concern liabilities, solvency assets, and solvency liabilities of the plan as a whole;
- (c) the transfer ratio;
- (d) the going concern liabilities and the solvency liabilities in respect of the transferred members, if any;
- (e) the going concern liabilities and the solvency liabilities in respect of the residual members, if any;
- (f) the transfer assets, if any, and the method of determining the transfer assets; and

(g) the amount of any going concern unfunded liability and/or solvency deficiency and the amount of any special payments, including the amortization period, required to liquidate the going concern unfunded liability and/or solvency deficiency with respect to the exporting plan.

(3) A separate report should be prepared for each of the residual exporting plans as at the effective date of transfer. Alternatively, a consolidated report which includes the results for the exporting plan and the results for its corresponding residual exporting plan may be prepared.

(4) The report for a residual exporting plan will be treated as a report for an ongoing plan and must meet the requirements of section 14 of the regulations, and any other applicable section(s) of the regulations. (For example, the funding requirements for the normal cost and any special payments must be identified.)

15. A report prepared for the importing plan as at the effective date of transfer must be filed with the application. The report will be treated as a report for an ongoing plan and must meet the requirements of section 14 of the regulations, and any other applicable section(s) of the regulations. For example, the funding requirements for the normal cost and any amortization payments as determined in accordance with section 16 must be identified.

16. (1) Where the report(s) for the importing plan or any of the residual exporting plans indicates that special payments are required, the sum of the scheduled amounts of the amortization payments for the importing plan and the residual exporting plan(s) for each month should be no less than the sum of the corresponding scheduled amounts of the monthly special payments required for all exporting plans immediately prior to any asset transfers. The amortization period(s) for the importing plan and each residual exporting plan should be shortened, if appropriate, and the final amortization payment(s) adjusted accordingly.

- (2) Except as permitted by subsection (3), payments which are not less than the combined scheduled amounts of the monthly amortization payments for the importing plan and the residual exporting plan(s) must be continued until the date on which the going concern unfunded liability and/or solvency deficiency identified for the importing plan and the residual exporting plans at the effective date of transfer is fully amortized or otherwise liquidated.
- (3) Where an actuarial gain or solvency excess emerges after the effective date of any of the reports, the amortization payment schedule established in the applicable report may be adjusted in accordance with subsection 5(17) and subsections 7(1) and (2) of the regulations. For that purpose "original amortization period" in subsection 7(2) of the regulations refers to the amortization period established in the report for the importing plan or the residual exporting plan, as the case may be.

#### Pension Plans that Provide Defined Contribution Benefits

17. (1) Where a transfer of a portion of the assets from a pension plan that provides only defined contribution benefits to another plan that provides only defined contribution benefits is proposed, the application should include a report for each exporting plan that identifies the market value of the assets of the plan, the liabilities in respect of the transferred members, the transfer assets, the liabilities in respect of the residual members, and the residual assets, all determined as if each plan terminated at the effective date of transfer.
- (2) Reports prepared as at the effective date of transfer for the importing plan and for each residual exporting plan must be filed with the application. Each report will be treated as a report for an ongoing plan.
18. The Superintendent may decide that the benefits of the members and former members are not protected where:

- (a) the amount of the transfer assets is less than the amount determined by multiplying the market value of the assets of the exporting plan by the ratio of the liabilities in respect of the transferred members to the total liabilities of the exporting plan, or
- (b) the amount of the residual assets is less than the amount determined by multiplying the market value of the assets of the exporting plan by the ratio of the liabilities in respect of the residual members to the total liabilities of the exporting plan.

#### **Amendments**

19. (1) Amendments to the exporting plan(s) and to the importing plan which provide for a transfer of assets and liabilities to the importing plan must be filed with the Superintendent.
- (2) All filed amendments must comply with the Act, the regulations, the amending provisions and any other relevant provisions of the exporting plans or the importing plan, or any prior plans, and any other documents required to be filed for any of those plans.
- (3) Amendments should also be consistent with any relevant policies of the Commission. Particular attention should be paid to established policies under Series A400 (amendments) and Series A700 (asset transfers).

#### **Retaining Information about the Members**

20. (1) The administrator of the exporting plan should maintain a record of information about the transferred members and the residual members. The information should be sufficient to identify all the members, former members and any other persons entitled to payment from the plan on the effective date of transfer and their respective benefits as at the effective date of transfer.



- (2) All information should be retained. At a minimum, the record of information about the exporting plan should include the names of the transferred members and the residual members, their last known addresses at the effective date of transfer, their respective benefits (including accrued pension benefits and ancillary benefits), the transfer assets, the residual assets, and the going concern and solvency liabilities for the transferred members and for the residual members. A record of the market value of the assets of the exporting plan as at the effective date of transfer should also be retained.
  - (3) Subsections (1) and (2) above also apply to the administrator of the importing plan with respect to:
    - (a) the members, former members and any other persons entitled to a payment from the plan prior to any transfer of assets to the plan; and
    - (b) any transferred persons where the transfer assets exceed the solvency liabilities in respect of the transferred persons.
  - (c) the name and registration number of the importing plan;
  - (d) the names and registration numbers of the other exporting plans;
  - (e) an explanation of the proposed transfer of assets, including the transfer ratios of the exporting plan, the residual exporting plan and the importing plan, and information concerning how benefits will be protected under the terms of the importing plan; and
  - (f) advice that comments on whether the proposal protects benefits may be submitted to the administrator and to the Superintendent within a forty-five (45) day period following receipt of the notice.
23. (1) Where the transfer is to a multi-employer pension plan, or to a pension plan that provides defined benefits where the obligation of an employer to contribute to the plan is limited to a fixed amount set out in a collective agreement, the notice should indicate that the transferred benefits may no longer be covered by the Pension Benefits Guarantee Fund, and may be subject to reduction in accordance with subsections 14(2)\* or (3) of the Act.

#### Notice

21. For each exporting plan, prior to the date of application, the administrator should transmit individual written notice of the application by personal delivery or by first class mail to:
- (a) each member, former member and any other persons entitled to payment from the plan;
  - (b) each trade union that represents the members;
  - (c) any advisory committee established in respect of the plan.
22. Notice should include:
- (a) the name and registration number of the exporting plan;
  - (b) the effective date of transfer;
  - (2) Specific details about how the benefits will be protected in the importing plan under the circumstances determined in accordance with section 12 of this policy should be included in any explanation provided under clause 22(e) above.
24. The Superintendent may accept other forms of notice and/or methods of delivery under appropriate circumstances. Where another form of notice or method of delivery was used, the applicant should justify the need for alternative service.
- \* Applies to multi-employer pension plans established pursuant to a collective agreement or trust agreement.

SECTION	Assets
INDEX NO.	A700-251
TITLE	Full Asset Transfers under Section 81 - Superintendent's Consent Required (replaces A700-250)
APPROVED BY	The Pension Commission of Ontario
PUBLISHED BBS	October 29, 1996
PUBLISHED	Bulletin 6/4 (Fall - Winter 1997)
EFFECTIVE DATE	When Published

1. (1) This policy replaces policy A700-250 (Asset Transfer under Section 81 - Superintendent's Consent Required) as of the effective date of this policy.
- (2) Applications that are subject to section 81 of the *Pension Benefits Act*, R.S.O. 1990, (the "Act") and that provide for a combination of full and partial asset transfers will be considered on the basis of this policy and Policy A700-226 (Partial Asset Transfers under Section 81 - Superintendent's Consent Required).
2. Where there is a proposal to transfer all of the assets from the pension fund of a pension plan registered in Ontario to the pension fund of another pension plan, and the transfer is not subject to either section 42 or section 80 of the Act, the transfer is subject to section 81 of the Act. (Transfers from pension plans registered in other jurisdictions are subject to the legislation of the applicable jurisdiction.)
3. Where section 81 applies, no transfer of assets may be made without the prior consent of the Superintendent under either of subsections 81(4) or 81(8) of the Act. This policy has been developed to assist in the preparation of applications for the Superintendent's consent.
4. (1) The Superintendent's prior consent to any asset transfer which affects a group of plan members who have not made transfer elections under Section 42 of the Act must be obtained in accordance with either of subsections 81(4) or 81(8) of the Act, unless the transfer is subject to subsection 80(10) of the Act.
- (2) Generally, this policy does not apply to asset transfers made in respect of individual plan members pursuant to a reciprocal transfer agreement. A reciprocal transfer agreement may be a separate filed document or may be contained in other filed documents that create and support a pension plan. Such an agreement might cover, for example, asset transfers respecting the reclassification of hourly employees to salaried status.

#### Terms

5. (1) For the purpose of this policy, the term "exporting plan" refers to each pension plan from which an asset transfer is proposed, and prior to any transfer(s) taking place, to the pension plan that will receive the assets. The term "importing plan" refers to the pension plan to which the assets will be transferred, after the transfers have taken place. (For example, if a transfer proposal affects five pension plans, there are five "exporting

plans" for the purpose of this policy. Assuming that assets are transferred from four pension plans at the effective date of transfer, the assets of five exporting plans will be held in the pension fund of the "importing plan".)

- (2) A new pension plan that has no members, former members, assets or liabilities prior to a transfer of assets may be established as the "importing plan". In such circumstances, the example shown in subsection (1) above would refer to four "exporting plans" and one "importing plan".
6. (1) The following terms shall have the meanings prescribed by section 1 of the regulations under the Act:
  - (a) actuarial gain;
  - (b) going concern liabilities;
  - (c) going concern unfunded liability;
  - (d) going concern valuation;
  - (e) solvency deficiency;
  - (f) solvency liabilities;
  - (g) special payment;
  - (h) transfer ratio.
- (2) Subject to section 14 below, "reports" for exporting plans that provide defined benefits are prepared in accordance with sections 13 and 15.
- (3) The "report" for the importing plan is prepared in accordance with sections 13, 16 and 17, as applicable.
- (4) "Solvency valuation" means a valuation performed in accordance with section 17 of the regulations.
- (5) "Solvency excess" means the excess determined in accordance with subsection 5(17) of the regulations.
- (6) The term "effective date of transfer" means the effective date of the amendment(s) which give rise to the transfer(s) of assets and liabilities from the exporting plan(s) to the importing plan. Unless otherwise indicated in this policy, all values, amounts and ratios are to be determined at the effective date of transfer.

## The Application

7. An application for the Superintendent's consent to a transfer of assets should include all of the information, statements or reports, as the case may be, identified in this policy.
8. The application should identify, by name and registration number, the exporting plans affected by the transfer proposal and the market value of the assets to be transferred from each applicable exporting plan.
9. Copies of the notices given pursuant to section 21 of this policy should also be included along with one certification by the administrator(s) for each notice transmitted. Certification of the date on which the notice was last transmitted, the persons or bodies to whom notice was transmitted, and the method of delivery should be provided.

## Obtaining Consent

10. (1) In accordance with subsection 81(5) of the Act, the Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members (the "benefits").
  - (2) The Superintendent will consider each application on its own merits. Guidelines which the Superintendent may consider in deciding each application are identified in this policy. The Superintendent may consider other proposals which differ from the guidelines set out in this policy. The applicant should justify the need for any departures from the guidelines, and must be able to demonstrate how the benefits are protected under the circumstances.
11. The Superintendent may decide that the benefits are not protected where:
  - (a) the transfer ratio of the importing plan is less than the highest transfer ratio of the exporting plans, and is less than 1.0; or



(b) the report for the importing plan indicates that special payments are required, and any scheduled amount of monthly amortization payment for the importing plan is less than the sum of the corresponding scheduled amounts of monthly special payments required for the exporting plans, except as adjusted in accordance with section 17 below.

12. Where a transfer of assets from a pension plan that provides defined benefits to a multi-employer pension plan, or to a pension plan that provides defined benefits where the obligation of an employer to contribute to the plan is limited to a fixed amount set out in a collective agreement is proposed, the Superintendent may decide that the benefits of the members and former members of the exporting plan are not protected unless:

(a) annuities are purchased; or

(b) the benefits are protected in some other way that is acceptable to the Superintendent.

### **Statements/Actuarial Reports**

#### **Pension Plans that Provide Defined Benefits**

13. For the purpose of sections 15, 16 and 17 below, the actuarial methods and assumptions used in preparing the solvency valuations for the exporting plans and the importing plan should be on a consistent basis. (For example, the economic assumptions underlying the actuarial bases for the solvency valuations should not differ.)

14. For the exporting plans, the applicant should include:

(a) a statement prepared by the actuary, that in his/her opinion, the transfer ratio of each of the exporting plans is at least 1.0; or

(b) where (a) does not apply and the transfer ratio of the importing plan is less than 1.0, or where the importing plan indicates that special payments are required, report(s) for the exporting plans prepared in accordance with section 15 below.

15. (1) A report should be prepared for each of the exporting plans at the effective date of transfer

by a person authorized under the regulations under the Act if any of the exporting plans has a transfer ratio of less than 1.0 and the transfer ratio of the importing plan is less than 1.0, or if the report for the importing plan indicates that special payments are required. Alternatively, a single consolidated report which includes information relating to each of the exporting plans may be prepared.

(2) For each exporting plan, the report(s) should include a going concern valuation and a solvency valuation. In addition to the transfer ratio, the amount of any going concern unfunded liability and/or solvency deficiency and the amount of any special payments, including the amortization period, required to liquidate the going concern unfunded liability and/or solvency deficiency should be identified.

16. A report prepared for the importing plan at the effective date of transfer must be filed with the application. The report will be treated as a report for an ongoing plan and must meet the requirements of section 14 and any other applicable section(s) of the regulations. For example, the funding requirements for the normal cost and any amortization payments as determined in accordance with section 17 must be identified.

17. (1) Where the report for the importing plan indicates that special payments are required, the scheduled amount of each monthly amortization payment should be no less than the sum of the corresponding scheduled amounts of the monthly special payments required for the exporting plans immediately prior to any asset transfers. The amortization period(s) should be shortened, if appropriate, and the final amortization payment(s) adjusted accordingly.

(2) Except as permitted by subsection (3), payment(s) which are not less than the scheduled amount of the monthly amortization payments for the importing plan must be continued until the date on which the going concern unfunded liability and/or solvency deficiency identified for the importing plan at the effective date of transfer is fully amortized or otherwise liquidated.

- (3) Where an actuarial gain or solvency excess emerges after the effective date of any of the reports, the amortization payment schedule established in the applicable report may be adjusted in accordance with subsection 5(17) and subsections 7(1) and (2) of the regulations. For that purpose "original amortization period" in subsection 7(2) of the regulations refers to the amortization period established in the report for the importing plan.

#### Pension Plans that Provide Defined Contribution Benefits

18. (1) For asset transfers from exporting plans that provide only defined contribution benefits to an importing plan that provides only defined contribution benefits, the applicant should include a statement that identifies the assets and liabilities of each exporting plan, determined as if each plan terminated at the effective date of transfer.
- (2) A report prepared at the effective date of transfer for the importing plan must be filed with the application. The report will be treated as a report for an ongoing plan.

#### **Amendments**

19. (1) Amendments to the exporting plan(s) which provide for a transfer of assets and liabilities to the importing plan must be filed with the Superintendent. A fully restated plan text should generally be filed for the importing plan.
- (2) All filed amendments must comply with the Act, the regulations, the amending provisions and any other relevant provisions of the exporting plans or any prior plans, and any other documents required to be filed for any of those plans.
- (3) Amendments should also be consistent with any relevant policies of the Commission. Particular attention should be paid to established policies under Series A400 (amendments) and Series A700 (asset transfers).

#### **Retaining Information about the Members**

20. (1) The administrator of the importing plan should maintain a record of information about the exporting plan at the effective date of transfer. The information should be sufficient to identify all the members, former members and any other persons entitled to payment from the plan on the effective date of transfer and their respective benefits as at the effective date of transfer.
- (2) All information should be retained. At a minimum, the record of information about the exporting plan should include the names of the members, former members and any other persons, their respective benefits (including accrued pension benefits and ancillary benefits), their last known addresses at the effective date of transfer, and the market value of the assets, the going concern liabilities and the solvency liabilities of the plan.
- (3) Subsections (1) and (2) above also apply to the administrator of the importing plan with respect to the members, former members and any other persons entitled to a payment from the plan prior to any transfer of assets to the plan.

#### **Notice**

21. For each exporting plan, prior to the date of application, the administrator should transmit individual written notice of the application by personal delivery or by first class mail to:
- (a) each member, former member and any other person entitled to payment from the plan;
  - (b) each trade union that represents the members; and
  - (c) any advisory committee established in respect of the plan.
22. Notice should include:
- (a) the name and registration number of the exporting plan;
  - (b) the effective date of transfer;
  - (c) the name and registration number of the importing plan;
  - (d) the names and registration numbers of the other exporting plans;

- (e) an explanation of the proposed transfer of assets, including the transfer ratios of the exporting plan and the importing plan, and information concerning how benefits will be protected under the terms of the importing plan; and
  - (f) advice that comments on whether the proposal protects benefits may be submitted to the administrator and to the Superintendent within a forty-five (45) day period following receipt of the notice.
23. (1) Where the transfer is to a multi-employer pension plan, or to a pension plan that provides defined benefits where the obligation of an employer to contribute to the plan is limited to a fixed amount set out in a collective agreement, the notice should indicate that the transferred benefits may no longer be covered by the Pension Benefits Guarantee Fund, and may be subject to reduction in accordance with subsections 14(2)\* or (3) of the Act.
- \* Applies to multi-employer pension plans established pursuant to a collective agreement or trust agreement.
- (2) Specific details about how the benefits will be protected in the importing plan under the circumstances determined in accordance with section 12 of this policy should be included in any explanation provided under clause 22(e) above.
24. The Superintendent may accept other forms of notice and/or methods of delivery under appropriate circumstances. Where another form of notice and/or method of delivery was used, the applicant should justify the need for alternative service.



SECTION	Surplus
INDEX NO.	S900-504
TITLE	Surplus Distribution to an Employer, - PBA, s. 78 and 79 and Reg. 909, s. 8 (replaces S900-501)
APPROVED BY	The Pension Commission of Ontario
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EFFECTIVE DATE	When published

Subsection 78(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8 (the "Act"), provides that surplus may not be paid to an employer unless the Commission consents to the payment. The Commission shall not consent to an application to distribute surplus to an employer until specific requirements and conditions have been satisfied. Statements and documents supporting the applicant's assertion that the requirements and conditions have been satisfied should be included in the Application to the Commission.

This administrative practice replaces S900-501, Surplus Distribution to an Employer, PBA S.78 and 79 and s. 8 of Ontario Regulation 909.

**Part I** of this administrative practice identifies the procedure for bringing an Application to the Commission pursuant to section 78 of the Act and subsections 8(1) and 8(2) of Regulation 909 (the "Regulation") on a full wind up.

**Part II** of this administrative practice identifies the modifications to Part I which apply to an Application made to the Commission pursuant to section 78 of the Act and subsections 8(1) and 8(2) of the Regulation on a partial wind up.

## General

It is the responsibility of the applicant to satisfy the Commission that the Application meets the requirements of the Act, the Regulation and Commission policies, procedures and administrative practices respecting such applications. It is also the applicant's responsibility to consider whether plan specific circumstances warrant the inclusion of additional information or documentation supporting the Application.

For example, additional information about members and/or former members or additional plan documentation may be relevant in the following circumstances:

- the source of all or a portion of the assets of the pension fund can be traced to the pension fund of another pension plan;
- all or a portion of the liabilities of a pension plan were converted to liabilities determined on another basis (a plan conversion);
- there was a partial wind up at any time prior to the date of wind up.

While every effort has been made to make this practice as complete as possible, the Commission is not bound by this practice. Further, the Commission is not bound by information or advice given to the applicant by staff of the Commission or the Superintendent in regards to an Application.

### Relevant Published Policies, Procedures and Administrative Practices

Applicants are advised that the following policies, procedures and administrative practices contain information relevant to an Application for the Commission's consent to a payment of surplus to an employer on full or partial wind up. The relevant materials are listed below by subject, index number and the date they appeared in the PCO Bulletin, a publication of the Pension Commission of Ontario.

- 1) Surplus Distribution to Beneficiaries as Cash on Wind Up; S900-300; August, 1993
- 2) Surplus Attributable to Employer and Employee Contributions on Plan Wind Up; S900-801; Summer, 1995
- 3) Allocation of Surplus Distributed to Members and Former Members on Wind Up; S900-900; Spring, 1994
- 4) Applications before the Commission - Decision-making Process; XTRB-01; August 1993
- 5) Pre-hearing Conference Procedures; P520-780 (replaces XTRB-02); March, 1996
- 6) Role of the Presiding Officer at the Pre-hearing Conference; P520-781 (replaces XTRB-03); March, 1996
- 7) Submission Deadlines for PCO Monthly Meetings; XTRB-04 (formerly P300-800); December '93/January '94
- 8) Filing Requirements and Procedure; W100-101, Summer, 1995. PCO Compliance Assistance Guideline No. 4, Revised December, 1990
- 9) Communications Between PCO and Plan Administrators; P500-001 (formerly A300-500); Winter, 1996
- 10) Asset Transfers under s. 80 - Superintendent's Consent Required; A700-200 (Policy Statement #2)

- 11) Asset Transfers under Section 81 - Superintendent's Consent Required; (all assets transferred) A700-250; Winter-Spring, 1996
  - and revision, A700-251; Fall, 1996;
  - (partial asset transfers) A700-225; Spring, 1994
  - and revision, A700-226; Fall, 1996

An applicant who is eligible to file an Application pursuant to subsection 8(2) of the Regulation (the "grandfathering" provision), should also refer to the following:

- 12) Court Applications - Surplus Entitlement in Wound Up Plans; S900-250; October, 1992
- 13) Procedures for Applications Pursuant to subsection 7a(2) O. Reg. 743/91 [grandfathering provision]; S900-550; October, 1992
- 14) Court and PCO Procedure for Applications under ss. 7a(2)(c), O. Reg. 708/87; S900-600; November, 1991

All of the relevant policies, procedures and administrative practices published by the Pension Commission of Ontario may not be listed above. Applicants are responsible for ensuring that all relevant publications have been considered when making an application pursuant to section 78 of the Act.

The content of this Administrative Practice is set out as follows:

#### PART I Distribution of Surplus to an Employer on Full Wind Up

General Principles  
The Notice of Application  
Written Agreement  
The Application  
Filing the Application

#### PART II Distribution of Surplus to an Employer on Partial Wind Up

Modifications Which Apply to Partial Wind Ups

#### SCHEDULE 1

Application Format and Explanatory Notes

## **PART I**

### **Distribution of Surplus to an Employer on Full Wind Up**

#### **General Principles**

1. Where payment of surplus to the employer is sought on a wind up, section 78 of the Act requires that no payment may be made without the Commission's prior consent. Before such consent may be given, the requirements of subsection 78(2) of the Act concerning notice and disclosure of plan provisions with respect to the payment of surplus on wind up must be met. In addition, the requirements of subsection 79(3) must be satisfied.
2. Generally, an employer winding up a pension plan will file an Application for the Commission's consent to payment of surplus to the employer:
  - (a) after the Superintendent of Pensions has approved payment of basic benefits out of the plan;
  - (b) if the plan documents permit surplus reversion to the employer on the wind up of the pension plan;
  - (c) after the employer has submitted a copy of the Notice of Application to the Superintendent;
  - (d) after the employer has transmitted the Notice of Application and, where applicable, has provided a copy of the proposed surplus distribution agreement to those persons who are entitled to receive it, and
  - (e) after the employer has obtained the written agreements as required by clause 8(1)(b) of the Regulation, or
  - (f) if pursuant to subsection 8(2) of the Regulation, the applicant has obtained or is seeking to obtain a court order with respect to surplus entitlement and distribution.
3. Compliance with the requirements of the Act, the Regulation and conditions identified in any Commission policy, procedure and administrative practice which affects the Application is the responsibility of the applicant.

4. Applicants are responsible for the accuracy and completeness of the information contained in the Application and any supporting documents.

#### **The Notice of Application**

##### Content

5. The Notice of Application required by subsection 78(2) of the Act must include the information prescribed under subsection 28(5) of the Regulation.
6. With respect to clause 28(5)(c) of the Regulation (i.e., surplus attributable to employee and employer contributions), the methodology used to determine the surplus attributable to employee and employer contributions must be consistent with the conditions under Policy No. S900-801.
7. With respect to clause 28(5)(e) of the Regulation (i.e., the statement that submission may be made in writing to the Commission within 30 days of receipt of the notice), the Notice must also state that:
  - (a) written submissions are to be directed to the attention of the Registrar; and
  - (b) information related to the date on which the Application will be considered by the Commission may be obtained from the plan administrator.
8. With respect to clause 28(5)(f) of the Regulation (i.e., contractual authority for surplus reversion), there must be complete disclosure of all provisions of the plan and prior versions of the plan which may be relevant to any determination of surplus entitlement, including provisions contained in all current and previous plan texts and trust agreements, insurance contracts, employee booklets and notices, collective bargaining agreements and any other relevant documents. "Prior versions of the plan" include any pension plan from which the assets of the wound up pension plan can be traced.

The actual wording of plan provisions which may be relevant to surplus entitlement and the authority to make plan amendments must be cited in the Notice of Application.



Where the plan documents do not contain explicit provisions with respect to surplus entitlement, this fact must also be disclosed in the Notice of Application.

If an Application requires a court order pursuant to subsection 8(2) of the Regulation, the applicant should refer to the procedure under Policy No. S900-600.

9. With respect to clause 28(5)(g) of the Regulation (i.e., notice concerning access to copies of the wind up report), if the office or location where the members were employed is closed, the employer must make alternative arrangements close to the location(s) where business was conducted for members to review the wind up report filed with the Commission in support of the surplus request.
10. The Commission may require the Notice of Application to be re-issued if the Commission determines that the requirements of the Act and the Regulation have not been satisfied, conditions identified in any Commission policy, procedure and administrative practice affecting Applications have not been met, or there has not been complete disclosure of all relevant information including the proposed surplus distribution agreement.
11. Subsection 28(5.1) of the Regulation requires that the employer submit a copy of the Notice of Application to the Superintendent before it is transmitted.

The Notice of Application should be submitted to the Superintendent by sending one (1) copy to:

Pension Commission of Ontario  
250 Yonge Street, 29th Floor  
Toronto, ON M5B 2N7

Attention: Superintendent of Pensions

12. With respect to paragraph 7 above and subparagraph 27(j) below, the Registrar will forward a copy of any written representations received by the Registrar to the applicant.

### Transmitting the Notice of Application

13. The employer is required to transmit the Notice of Application to all parties listed in subsection 78(2) of the Act.
14. Transmittal must be by personal delivery or first class mail in accordance with subsection 112(1) of the Act.
15. Where the plan wind up results from an event affecting the employment of the members, such as in the case of a plant closure, all members participating in the plan on or after the date notice of the event is given must be included as members for purposes of the wind up, including the surplus distribution. This applies even if a member terminates after the notice date but prior to the event actually occurring. Please also refer to policy W100-101.

### Public Advertisement

16. The Superintendent may authorize delivery of the Notice of Application by public advertisement or otherwise in accordance with subsection 112(3) of the Act if satisfied that it is not reasonable to give individual notice to all persons in accordance with section 14 above.
17. Where an applicant requests the Superintendent's authorization to deliver the Notice of Application by public advertisement, the information provided in the draft public advertisement submitted to the Superintendent with the request must clearly indicate the following:
  - (a) to whom the notice is addressed (e.g., former members and other persons entitled to payments from the wound up plan or any applicable predecessor plan(s)),
  - (b) the reason that these persons are being contacted (i.e, wind up of the pension plan in a surplus position and the surplus application),
  - (c) where the details of the surplus application will be made available,
  - (d) information that persons to whom notice has been transmitted may make written representations to the Commission with respect to the Application within thirty (30) days after receiving the notice.

## Written Agreement (Applications pursuant to clause 8(1)(b) of the Regulation)

### Content

18. When considering the Application, the Commission must be satisfied that;

- (a) prior to agreeing in writing, the affected members, former members and other persons have received, in addition to the Notice of Application, a copy of the proposed surplus distribution agreement with respect to all persons who are to participate in the surplus allocation, and
- (b) the required number of written agreements has been obtained by the applicant.

19. The written agreement must provide for:

- (a) the name of the individual;
- (b) the signature of the individual;
- (c) the name of a witness; and,
- (d) the signature of the witness.

### Transmitting the Written Agreement

20. In order to obtain the written agreements required under clause 8(1)(b) of the Regulation, a copy of the proposed surplus distribution agreement must be given to all persons listed in subsection 78(2) of the Act. In accordance with subsection 112(1) of the Act, transmittal must be by personal delivery or first class mail.

A copy of the proposed surplus distribution agreement should be transmitted with the Notice of Application.

### Written Agreements

21. In order to satisfy subclause 8(1)(b)(iii) of the Regulation, an applicant is required to obtain the written agreement of two-thirds of the aggregate of those former members and other persons who are entitled to payments under the pension plan on the date of wind up. This requirement is subject to the Commission's discretion following a review of the circumstances which are applicable to each individual Application.

22. The appropriate bargaining agent for the purposes of subclause 8(1)(b)(ii) of the Regulation, is the collective bargaining agent or agents that represent the members of the plan at the date the written agreement is signed.

23. A collective bargaining agent may enter into a written agreement on behalf of those plan members represented by the agent only. Therefore, if a pension plan involves more than one bargaining agent, the written agreement of each bargaining agent is required.

24. If a pension plan is provided for both unionized and non-unionized members, the written agreement of the collective bargaining agent(s) as well as two-thirds of those members not represented by the bargaining agent(s) must be obtained.

25. The written agreement of a collective bargaining agent that represents the members of the pension plan must be obtained, even where the collective bargaining agent does not bargain the pension plan.

## The Application

26. The format and content of the Application should be consistent with Schedule 1 under this practice.

27. All material required by the Act and Regulation must be attached to the Application, including:

- (a) A list, by class, of the names of members, former members or other persons who are affected by the wind up.
- (b) Pursuant to subsection 28(6) of the Regulation, a certified copy of the notice referred to in subsection 28(5).
- (c) A statement that the employer has complied with subsection 78(2) of the Act.
- (d) A list, by class, of the names of members, former members or any other persons who received the Notice of Application, the last date Notice was transmitted and the form of delivery of the Notice.

(e) Copies of all provisions from the plan documents, trust agreements, insurance contracts, employee booklets and notices, and any other documents respecting surplus entitlement (in chronological order and clearly labelled) which may be relevant.

(f) Copies of the title page and the balance sheet (or any updated balance sheet) of the wind up report as of the effective date of the wind up giving rise to the Application and the actuary's certification from the wind up report or any supplemental wind up report.

A supplement to a wind up report will be required if it is discovered that the initial report does not reflect the surplus distribution proposals outlined in the Application.

(g) Information required to be submitted to PCO staff in accordance with Policy No. S900-801.

(h) The Superintendent's approval of the payment of basic benefits based on the wind up report and any supplementary report.

(i) A copy of the most recent collective bargaining agreement if the pension plan is negotiated and the agreement has not been filed in accordance with subsection 12(3) of the Act.

(j) Any written representations objecting to the Application received by the applicant directly or through the Registrar, as well as any response(s) of the Applicant.

(k) Any submissions which may be relevant to the Application.

Where other materials or information which may be relevant are discovered after the Application has been filed, such materials or information must be filed as an addendum to the initial Application (note paragraphs 29 and 39 below).

(l) Where the Application is pursuant to clause 8(1)(b) of the Regulation:

i) a copy of the proposed surplus distribution agreement;

ii) a list, by class, of the names of members, former members or any other persons who received a copy of the proposed surplus distribution agreement, the last date the agreement was transmitted and the form of delivery of the agreement;

iii) a sample copy of the written agreement obtained from a plan member, former member, or other person with respect to the proposed surplus distribution agreement, and

iv) copies of the written agreement(s) between the employer and any collective bargaining agent(s) that pertain to the surplus distribution agreement.

(m) Where the Application is to be brought pursuant to subsection 8(2) of the Regulation, the applicant should refer to Policy No. S900-600. If the applicant has already obtained a court order concerning entitlement to surplus and distribution of funds from surplus, a copy of the court order must be attached to the Application.

### Filing the Application

28. A complete Application should be filed with the Commission at least ninety (90) days prior to the date of the Commission meeting at which the applicant wishes to have the Application considered.

Submission of the Application, including attachments, on stock which does not exceed 8-1/2" x 11" is preferred. Photo-reduction of relevant materials which are on larger stock to the more manageable 8-1/2" x 11" size is suggested (subject to legibility).

29. The Application is filed with the Commission by sending 18 copies to:

The Registrar  
Pension Commission of Ontario  
250 Yonge Street, 29th Floor  
Toronto, ON M5B 2N7

Eighteen (18) copies of any information or materials which are supplemental to the initial filing and which are required in order to complete the Application should be filed with the Registrar.



30. The Registrar will give the applicant acknowledgment of receipt of the Application.
31. The applicant and anyone who made representation pursuant to subsection 78(3) of the Act will be advised of the date on which the Commission will consider the Application.
32. The Commission will not consider the Application unless the Superintendent has approved the payment of basic benefits on the basis of the wind up report.
33. If the administrator is a person other than the employer, the employer must forward a copy of the Application to the plan administrator.
34. For Applications made pursuant to clause 8(1)(b) of the Regulation, a copy of a sample signed written agreement should be included in each of the eighteen (18) copies submitted to the Registrar. As well, two full sets of all of the signed written agreements obtained from plan members, former members, and other persons with respect to the disclosed surplus distribution agreement must be filed with the Registrar. One set should include all the original signed written agreements.
38. The Applicant, the bargaining agent(s), or any other parties who wish to respond to staff's memorandum or any submission from the Superintendent of Pensions must file their response with the Registrar nine (9) days prior to the Commission meeting at which the application is scheduled to be heard or request that consideration of the application be deferred if more time is required.

Eighteen (18) copies of the new submission and any supporting materials should be submitted to the Registrar.

Copies of any new submission must also be provided to the other parties at least nine (9) days prior to the Commission meeting.
39. Consideration of the Application will be deferred if new submissions include new material which the Commission refers to staff for review.

The Registrar will advise the Applicant, any bargaining agent(s), and anyone who made representation pursuant to subsection 78(3) of the Act of the revised date on which the Commission will consider the Application.

#### Review Process

35. The Registrar will provide the appropriate PCO staff with a copy of the Application, and for Applications made pursuant to clause 8(1)(b) of the Regulation, the copies of the signed written agreements.
36. Staff will review the Application, and provide their comments and conclusions in respect of the Application in a memorandum to the Commission.
37. The Registrar will provide a copy of the staff memorandum and/or any submissions from the Superintendent of Pensions to the Applicant, the bargaining agent(s) of the members (if applicable) and any other parties who have made representations to the Commission pursuant to section 78(3) of the Act. Copies will be provided fourteen (14) days prior to the Commission meeting at which the Application is to be considered.

#### Pre-Hearings and Commission Decisions

40. Applicants should be aware of the decision-making process outlined in Policy No. XTRB-01 (formerly P300-100). An Application may be set over for a pre-hearing conference as outlined in Policy No. P520-780 (formerly XTRB-02).
41. After the Commission has made its decision, the Registrar will communicate the Commission's decision in accordance with subsection 79(5) of the Act.
42. Any party to a proceeding before the Commission under section 79 of the Act may appeal to Divisional Court from the Commission's decision pursuant to section 91 of the Act.

**PART II**  
**DISTRIBUTION OF SURPLUS TO AN**  
**EMPLOYER ON PARTIAL WIND UP**

Part I procedures will apply with respect to partial wind ups subject to the following:

1. For the purpose of an Application under Part II of this Administrative Practice, any reference to "full wind up" or "wind up" under Part I of this paper should be read as "partial wind up".
2. Those persons listed in subsection 78(2) of the Act who are entitled to receive the Notice of Application and a copy of the proposed surplus distribution agreement by personal delivery or first class mail in accordance with subsection 112(1) of the Act are as follows;
  - (a) all persons who are directly affected by the partial wind up (i.e., are entitled to receive payment from the pension plan as a result of the event which gave rise to the partial wind up),
  - (b) all persons who ceased to be employed as a result of the event which gave rise to the partial wind up, and
  - (c) each collective bargaining agent that represents members under the plan at the date of partial wind up.
3. All persons who are not directly affected by the partial wind up are entitled to receive only the Notice of Application by personal delivery or first class mail. However, subject to obtaining the Superintendent's authorization under subsection 112(3) of the Act, the employer may choose to provide Notice by public advertisement or otherwise.
4. For the purposes of obtaining written agreement in accordance with subclause 8(1)(b)(ii) of the Regulation, the appropriate collective bargaining agent is the collective bargaining agent which represents the members under the plan at the date of partial wind up who are directly affected by the partial wind up.

The written agreement of a collective bargaining agent that is a collective bargaining agent at the date of partial wind up for those members who are not affected by the partial wind up is not required to be obtained.
5. Where written agreement is required pursuant to subclause 8(1)(b)(ii) of the Regulation, and there is no "collective bargaining agent" which represents the members who are directly affected by the partial wind up, written agreement must be obtained from at least two-thirds of the members who are directly affected by the partial wind up.
6. For the purposes of subclause 8(1)(b)(iii) of the Regulation, the written agreement of at least two-thirds of the aggregate of the former members and other persons who are directly affected by the partial wind up must be obtained. This requirement is subject to the Commission's discretion following a review of the circumstances which are applicable to each individual Application.

## SCHEDULE 1

### FORMAT AND CONTENT OF THE APPLICATION TO THE COMMISSION FOR CONSENT TO THE REFUND OF SURPLUS TO AN EMPLOYER

- Date:** *Enter the date of the application.*
- Employer:** *Provide the full legal name of the employer making the application.*
- Pension Plan:** *Provide the full legal name of the pension plan and the provincial registration number.*
- Prepared By:** *Provide the name and title of the corporate officer authorized to act on behalf of the employer in respect of the application. (Unless otherwise indicated in the application, all communication from the Commission will be directed to the person who files the application.)*

**Nature of the Application:**

*Provide a full description of what is being asked of the Commission with reference to the specific section(s) of the Act and Regulations pursuant to which the application is being made. For example:*

*Application for the Pension Commission's consent pursuant to subsection 78(1) of the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended, and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended, to a payment of surplus to (provide full legal name of the company) in the amount of \$ (show the amount as of the effective date of wind up) as at (show the effective date of wind up) plus investment earnings thereon to the date of payment and (add reference to any other adjustment that will be made in the proposed refund to the employer such as expenses).*

*This application is made pursuant to a surplus distribution agreement whereby (x) per cent of the surplus as of the effective date of wind up will be distributed to the members, former members and other persons entitled to benefits as of the effective date of wind up in the form of indexed benefits.*

*Appropriate modifications will be required with respect to applications which are pursuant to subsection 8(2) of the Regulation where the applicant has applied or, will apply, to court for an order under clause 7a(2)(c) of Ontario Regulation 708/87 as that section read prior to December 18, 1991.*

**Actuary/Counsel:**

*This section should provide the name of these persons connected to the application, either as agents of the employer making the application, or those acting on behalf of the members, former members, etc. If there is no such individual, please indicate "None".*

**Actuary for the Applicant (and name of firm):**

**Counsel for the Applicant (and name of firm):**

**Counsel for the Members/former members/union/etc.:**

**Actuary for the Members/former members/union/etc.:**



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## Collective Bargaining Agent:

*Provide the name of the Collective Bargaining Agent(s) who represent any members or former members of the pension plan.*

## Background:

*Provide a brief summary of the background of the plan leading up to the application including;*

- *the effective date of the plan,*
- *the classes of members covered by the plan,*
- *the basic benefit structure (e.g. "non-contributory", flat benefit plan"),*
- *a brief chronology of the plan and prior versions thereof, including any pension plan from which assets of the wound up pension plan can be traced (include references to asset transfers to or from the pension fund of another pension plan, plan conversions, and partial wind ups that may have occurred prior to the date of wind up),*
- *the relevant corporate history including the background to any changes in the name of the employer associated with the pension plan,*
- *the effective date and reasons for the wind up of the pension plan, and*
- *any information which will assist in understanding the application.*

## Subsection 78(2) of the Act - Notice Requirements

*In the following subsections, the applicant should satisfy the Commission that the notice requirements of the Act and Regulations have been satisfied.*

### (a) Subsections 28(5) and 28(5.1) of the Regulation:

*Provide information indicating how the applicant has complied with:*

- *Subsection 28(5) and any related Pension Commission policies, procedures or administrative practices setting out the minimum contents to be included in the Notice of Application required to be issued under subsection 78(2) of the Act.*
- *Subsection 28(5.1) which requires that a copy of the Notice of Application be filed with the Superintendent prior to transmittal to the members, former members and other persons.*

### (b) Subsection 28(6) of the Regulation:

*Provide information demonstrating compliance with subsection 28(6) of the Regulation which requires that the application be accompanied by a certified copy of the Notice of Application, a statement that subsection 78(2) of the Act has been complied with, the date the last Notice of Application was distributed and details as to the classes of persons who received notice. Include reference to the Attachment or Tab at which the certified copy of the notice may be found.*

**Subsection 112(3) of the Act - Alternate Service:**

*If transmittal by public advertisement or otherwise, was used in lieu of individual notice, indicate the classes or groups for whom service by public advertisement was provided along with advice as to the dates and newspapers an advertisement ran or, if applicable the date other alternative forms of notice were given. Include reference to the Attachment or Tab at which copies of the newspaper advertisements and the Superintendent's authorization for service by public announcement may be found.*

**Subsection 79(3) of the Act - Conditions Precedent:**

*In the following sections, the applicant should satisfy the Commission that the conditions of the legislation that have been met.*

**(a) Clause 79(3)(a) - The Plan has a Surplus:**

*Provide advice as to the date of the Superintendent's letter approving the distribution of the members' and former members' basic benefits. Include reference to the Attachment or Tab at which extracts of the wind up report and supplemental report and a copy of the Superintendent's letter may be found. Include in the application a brief summary of the balance sheet for the plan as at the effective date of wind up along with an updated balance sheet if there has been any significant change in the figures. For example:*

Balance Sheet	As at effective date of wind up	As of (current date)
Market value of assets	\$ .00	\$ .00
Liabilities		
Basic benefit entitlements	\$ .00	\$ .00
Liabilities for enhancements	\$ .00	\$ .00
Expenses	<u>\$ .00</u>	<u>\$ .00</u>
Surplus	\$ .00	\$ .00

**Surplus sharing agreement:**

To employees	\$ .00 ( %)
To employers	\$ .00 ( %)

(b) **Clause 79(3)(b) of the Act - The Plan Provides for the Payment of Surplus to the Employer on the Wind Up of the Pension Plan:**

*Provide an outline of the history of the plan provisions relating to the disbursement of surplus on wind up and, where any of the provisions have been amended since inception, the authority under the plan to amend. The outline must include reference to the plan documents, trust agreements, insurance contracts, employee booklets, collective bargaining agreements and any other relevant documents since the inception of the pension plan any prior pension plan. In addition, the outline should include reference to any documents that did not contain an express provision relating to surplus on wind up, or that were not supportive of the current application by the employer.*

*Reference should be included as to the Attachment(s) or Tab(s) at which clearly labelled copies of all relevant extracts from the plan documents, trust agreements, insurance contracts, employee booklets and notices, and any other documents or submissions respecting surplus entitlement may be found.*

*It is the responsibility of the applicant to satisfy the Commission that the conditions of the legislation for the Commission's consent to the application have been satisfied. Therefore, there should be some explanation or elaboration concerning why the applicant believes that the plan provides for payment of surplus to the employer.*

(c) **Clause 79(3)(c) of the Act - Provision has been made for the Payment of All Liabilities of the Pension Plan:**

*Outline the status of the distributions of basic benefits and surplus to members, former members and any other persons entitled to payments. If all distributions to the members and other persons have not been completed, the Commission's consent to the payment to the employer normally will not be effective until all entitlements of the members, former members and other persons have been paid, purchased, or otherwise provided to the satisfaction of the Commission.*

**Clause 8(1)(b) of the Regulation - Written Agreement**

*Provide a summary of the notices issued and signed agreements provided. For example:*

	Total Number	Notices Issued	Written Consents	(%)
Employer	_____	_____	_____	_____
Collective Bargaining Agent(s)	_____	_____	_____	_____
Members	_____	_____	_____	_____
Former Members/ Other Persons	_____	_____	_____	_____



## **Subsection 8(2) of the Regulation - The Court Order**

### **(a) Clause 8(2)(a) of the Regulation - The Status of the Application to Court:**

*Provide information concerning the status of the application to the court. Refer to the attachment which indicates the applicant's intention or where the copy of the order is located.*

*The applicant (enter "has applied" or "will apply") to the court for an order pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991 (enter "and has obtained" or "is to obtain") an order for payment of the surplus assets to the applicant on termination of the Plan.*

### **(b) Clause 8(2)(b) of the Regulation - Eligibility as a "Grandfathered Plan":**

*Provide information supporting the applicant's position that the application is eligible to proceed under the "grandfathering provision".*

*The applicant may make application pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991 as (enter the reason why the plan is a "grandfathered plan", i.e., "the notice of proposal to wind up was filed prior to December 18, 1991" - enter the date of filing).*

## **Representations**

*Indicate if any objections or representations were received. Refer to the attachment where copies of the objections or representations and any response(s) of the applicant are located.*

## **Attachments**

*The applicant should provide an index of all attachments to the Application. It is preferred that the attachments be listed in an order which corresponds to the order of the subject matter under this document, and where applicable, in chronological order. Where an Application is a bound Application, the relevant tabs should be listed.*

SECTION	Procedures - Administration
INDEX NO.	P500-003
TITLE	Records Maintenance and Retention
APPROVED BY	The Pension Commission of Ontario
PUBLISHED	March 1996 from PCO reception and Bulletin 6/4 (Fall - Winter 1997)
EFFECTIVE DATE	When Published

### **Records Maintenance and Retention**

The Registrar is responsible for maintenance and retention of records and files related to applications brought before the Commission, minutes, agendas, pre-hearing conference records and hearing records.

### **Commission Applications**

An original set of documents constituting a complete application, including correspondence and representations, are maintained by the Registrar. Commission meeting materials dating from 1987 onward are stored on-site at 250 Yonge Street, 29th floor.

### **Commission Meeting Agendas and Minutes**

The Registrar is responsible for preparing the Commission meeting agenda and minutes. The agenda and approved minutes are kept in the *Agendas and Minutes* book. A copy of the approved minutes is forwarded to the Minister.

### **Pre-Hearing Conference and Hearing Record Documents**

The Registrar is responsible for records retention for all pre-hearing and hearing documents which form the Pension Commission hearing record. Section 20 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22., states:

(20) A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

- (a) any application, complaint, reference or other documents, if any, by which the proceeding was commenced;
- (b) the notice of any hearing;
- (c) any interlocutory orders made by the tribunal;
- (d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be used in evidence in any proceeding;
- (e) the transcript, if any, of the oral evidence given at the hearing; and
- (f) the decision of the tribunal and the reasons therefor, where reasons have been given.

The Registrar will maintain one set of all pre-hearing and hearing documents filed with the Commission.

<b>SECTION</b>	Procedures - Applications
<b>INDEX NO.</b>	P510-401
<b>TITLE</b>	Surplus Refund Applications on Wind Up - Acknowledgment of Applications, Representations and Communication of Commission Decision
<b>APPROVED BY</b>	The Pension Commission of Ontario
<b>PUBLISHED</b>	March 1996 from PCO reception and Bulletin 6/4 (Fall - Winter 1997)
<b>EFFECTIVE DATE</b>	When Published

#### **Surplus Refund Applications on Wind Up - Acknowledgments of Applications and Representations**

1. The Registrar logs all applications received indicating the date received and the application contents. Each copy of the application is date stamped and assigned an agenda item number. A copy of the application will be sent to the Pension Officer responsible for the plan immediately upon receipt.
2. Within 5 business days of receipt of the application, the Registrar acknowledges it by letter and copies the Pension Officer.
3. The Registrar distributes remaining copies of the applications internally at a later date.

#### **Acknowledgment of Representations**

1. When the Registrar receives a member representation with respect to an application, the Registrar acknowledges it pursuant to subsection 78(3) of the Act. The Registrar forwards a copy of the representation and a copy of the acknowledgment to the responsible Pension Officer.
2. The Registrar will forward copies of all member representations to the applicant (or the agent of the applicant who filed the application); counsel for the members, if applicable; and the union, if applicable.

3. If a member representation is received which is marked "Personal & Confidential", the Registrar will return the representation to the member or former member making the representation. The Registrar will advise that all representations filed with the Commission are public documents and the information may be requested to be reviewed by the public. The member or former member will determine whether to resubmit the document to the office of the Registrar.

4. The Registrar retains the original copy of all representations until after the matter is settled.

#### **Advice as to Date Application is to be Considered by the Commission**

1. About 14 days prior to the Commission meeting at which an application is expected to be considered, the Registrar will receive the staff report in respect of the matter.
2. If fax numbers are provided, the Registrar will fax a copy of the staff report to the applicant (or the agent of the applicant who filed the application); counsel for the members, if applicable; the union, if applicable; and all persons who made representations.
3. The Registrar will advise the applicant by mail [(or the agent of the applicant who filed the application); counsel for the members, if applicable; the union, if applicable; and all persons



who made representations pursuant to subsection 78(3) of the Act] of the Commission date at which the matter is expected to be considered (the staff report will be included with this mailing).

4. If the application cannot be heard at the specified Commission meeting, the Registrar will so advise the applicant [(or the agent of the applicant who filed the application); counsel for the members, if applicable; the union, if applicable; and all persons who made representations] and will indicate the date on which the application is expected to be considered by the Commission.

#### **Communication of Commission Decisions**

1. Within seven days following the Commission meeting at which a decision is made in respect of an application, and the Chair confirms that the motion adopted by the Commission is recorded Commission meeting minutes, the Registrar shall advise the applicant in writing [(or the agent of the applicant who filed the application); counsel for the members, if applicable; the union, if applicable; and all persons who made representations] of the Commission's decision.

2. If the Commission's decision is conditional, the Registrar will follow-up with the applicant to ensure that all conditions are satisfied. Information about the condition that is received by the Registrar shall be confirmed by the Pension Officer. When the Commission is satisfied that the conditions have been met, the Registrar will relate the Commission's satisfaction to the applicant in writing.
3. If the application is brought pursuant to subsection 8(2) of the Regulations, the Registrar will file the written consent of the Pension Commission of Ontario with the court after all conditions attached to the Commission's consent have been satisfied.
4. The Registrar will advise the applicant [(or the agent of the applicant who filed the application); counsel for the members, if applicable; the union, if applicable; and all persons who made representations] when the written consent of the Pension Commission has been filed with the court.

SECTION	Procedures - Applications
INDEX NO.	P510-402
TITLE	Surplus Refund Applications on Wind Up - Late Representations and Submissions
APPROVED BY	The Pension Commission of Ontario
PUBLISHED	March 1996 from PCO reception and Bulletin 6/4 (Fall - Winter 1997)
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#### **Late Representations and Submissions - Filed With Registrar Just Prior to Commission Meeting**

Representations and submissions received by the Registrar prior to the mailing of materials to the Commission members will be included in the mailing. If a representation or submission is received by the Registrar after the mailing of materials to Commission members, the Registrar will record the late submission in the log and date stamp and record the Commission meeting date on the submission. The Registrar will produce the required number of copies.

The Registrar will acknowledge receipt of the late submission and will advise the party that the late materials will be available to the Commission as part of its deliberations when the application is considered.

The Registrar will also advise the party that, if the late submission is lengthy and Commission members have insufficient time prior to the Commission meeting to review it, or, if the principles of natural justice and procedural fairness would not be served by proceeding with the application at the scheduled meeting, the Commission may defer the matter to a future Commission meeting. The decision to defer consideration of an application would be made by the Chair in consultation with the Commission members.

If other parties have previously made representations or submissions, the Registrar will transmit, time and resources permitting, the late submission to the other parties prior to the Commission meeting. However, should time or resources not permit transmission of the material to all other parties before the Commission meeting, this fact would be considered by the Commission when it discusses whether the application should be deferred to a later date.

Since late submissions or representations can cause delay, the party making the submission or representation should transmit copies to all other interested parties that are known and should inform the Registrar of the distribution and the names of these parties.

The Registrar will distribute copies of the late submission to the appropriate PCO staff including the Pension Officer responsible for the plan.

The Registrar will provide copies of the late submission to each Commission member for review prior to the Commission meeting.

SECTION	Procedures
INDEX NO.	P515-750
TITLE	Commission Meetings - Purpose and Procedure
APPROVED BY	The Pension Commission of Ontario
PUBLISHED BULLETIN	March 1996 from PCO reception and Bulletin 6/4 (Fall - Winter 1997)
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### Commission Meetings - Purpose and Procedure

#### Purpose of the Commission

The Commission is a quasi-judicial administrative tribunal which was established by the *PBA, 1963* and continued by the *PBA, 1990*. The duties of the Commission are set out in sections 96 and 97 of the Act:

- to administer the Act and the regulations;
- to promote the establishment, extension and improvement of pension plans in Ontario;
- to advise the Minister in respect of the business of the Commission;
- to make recommendations to the Minister in respect of the Commission; and
- to conduct surveys and research programs and to compile statistical information related to pensions and pension plans.

#### Composition of the Commission

Subsection 93(2) of the Act states that the Commission shall be composed of not fewer than five and not more than nine members and subsection 93(8) states that a majority of the Commission members, including the head or deputy head, constitutes a majority. A majority vote prevails.

### Schedule of Commission Meetings

Commission meetings are held regularly and generally occur on the last Thursday of each month except August. Commission meeting dates are scheduled a year in advance and the dates are published in the *PCO Bulletin* along with the deadlines by which submissions for matters to be heard at specified meetings must be filed.

#### Commission Meeting Agenda

Meetings are generally composed of three parts and functions: adjudication, information sharing and approval of policies and procedures.

- 1) **Adjudicative Function** - The Commission considers matters over which it has decision making authority under the Act, and applications under this function are considered as follows:
  - application for a refund of employee contributions (ss. 63(7) and (8) and s. 90(1)(c) of the Act);
  - application for the payment of surplus funds to an employer (sections 78 and 79 of the Act and sections 25, 26 and 27 of the Regulation);
  - application for refund of employer overpayment or other payment (ss. 78(4) of the Act);



- application for the extension of a time period (s. 105 of the Act);
- application for a declaration that the Guarantee Fund applies to a pension plan (ss. 91(1) of the Act); and
- application for allocation of money from the Guarantee Fund to the plan (ss. 34(7) of the Regulation).

If it is decided that a non-section 89 application requires more in-depth consideration by the Commission, the matter may be set over to another Commission meeting.

- 2) Other Matters - The Chair and PCO staff provide Commission members with information on other pension related matters of interest.
- 3) Approval of Policies and Procedures - Commission members regularly receive reports and consider recommendations.

Readers may also refer to the *PCO Annual Report for the Fiscal Year Ending March 31, 1995* for a discussion of *The Tribunal - Roles and Responsibilities* (page 7). The article takes a look at the policy making function of the Commission, the quasi-judicial decision making function of the Commission and the leadership function of the Commission.

SECTION	Procedures - Hearings
INDEX NO.	P520-761
TITLE	Draft Consent Document for Filing Commission Consent with the Court for Surplus Distribution under ss. 8(2) of the Regulations
APPROVED BY	The Pension Commission of Ontario
PUBLISHED	Bulletin 5/2 (Spring 1994) and March 1996 from PCO reception and Bulletin 6/4 (Fall - Winter 1997)
EFFECTIVE DATE	When Published

**Draft Consent Form to Expedite Filing of  
Commission Consent for Surplus Distribution  
under ss. 8(2) of the Regulation with the Court.**

Employers applying for consent to the payment of surplus out of a pension plan pursuant to subsection 8(2) of the Regulation (and s. 7a(2)(c) of the Regulation as it read immediately before December 18, 1991) are encouraged to attach a draft consent to their application. This will expedite the filing of consents with the court for those cases which are approved by the Commission.

The preamble portion to the draft consent should accurately reflect how the applicant has met the requirements of the Act and regulations. If the Commission finds that the draft consent form needs revision, it may request the applicant to make such revisions. The suggested format for a draft consent is shown below.

- (Note: 1) paragraph 5 of the draft consent document was inserted)  
2) this policy replaces S900-253.

**IN THE MATTER OF AN APPLICATION BY**  
*(insert the name of the company making the application)*  
**FOR THE CONSENT OF THE PENSION COMMISSION OF ONTARIO**  
**TO THE PAYMENT OF SURPLUS FROM THE**  
*(insert the name of the pension plan),*  
**REGISTRATION NUMBER *(insert "PN" number),***  
*(insert the name of the company making the application)*

) *(date signed by Chair)*  
 ) *(to be inserted by Chair)*

**CONSENT**

**THIS APPLICATION** made by *(insert the name of the company making the application)* for the consent of the Pension Commission of Ontario (the "Commission") to the payment of surplus from the *(insert the name of the pension plan)*, Registration Number *(insert "C" number)* (the "Pension Plan"), was considered by the Commission at 250 Yonge Street, Toronto, Ontario on *(insert the date of the Commission meeting at which the application will be considered)*;

**UPON** being satisfied that proper notice of the application for surplus payment had been given pursuant to subsection 78(2) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "Act");

**AND UPON** reviewing the Wind Up Report (as at *(insert the effective date)*) dated *(insert date)* prepared by *(insert the name of the company that prepared the report)*, *[include the following if a supplemental report has been filed, "and the Wind Up Report (as at (insert the effective date)) dated (insert date) prepared by (insert the name of the company that prepared the report),"]* and all other material filed in support of the application;

**AND UPON** considering the responses received from participants of the Pension Plan;

**AND UPON** being satisfied that all other conditions of subsection 79(3) of the Act had been met;

**THE COMMISSION HEREBY CONSENTS** pursuant to subsection 78(1) of the Act and subsection 8(2) of Regulation 909, R.R.O. 1990, as amended, to a payment of surplus to *(insert the name of the company making the application)* from the *(insert the name of the pension plan)* in the amount of \$(*insert the amount of the refund requested*) as at *(insert the effective date of the last filed report)* plus investment earnings thereon to the date of payment (estimated to be \$(*insert estimated refund amount*) as at *(insert effective date of the estimate)*).

**THE COMMISSION** will file its consent with the Court pursuant to subsection 8(2) of the Regulation.

**Monica Townson, Acting Chair**  
Pension Commission of Ontario



SECTION	Procedures - Hearings
INDEX NO.	P520-762
TITLE	Release of Hearing Documents Filed with the Commission
APPROVED BY	The Pension Commission of Ontario
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### **Release of Hearing Documents Filed with the Commission**

Documents are filed with the Registrar for hearings before the Commission. The Registrar logs all documents received pertaining to a hearing:

- (1) in the mail log indicating the date received and content; and
- (2) in the hearing record pertaining to the related hearing.

Parties are required to distribute copies of all documents filed with the Commission to each other.

If a member, former member, beneficiary, or anyone claiming to have interest in the hearing matter requests in writing information or hearing documents, the Registrar will provide parties with access to hearing documents. The Registrar informs all parties of such requests so that everyone is apprised of all parties with an interest in the proceedings and in the matter to be heard.

At least one week prior to a hearing conference, the Registrar will send a complete set of all hearing documents filed in respect of the hearing to the panel members for their review.

After the hearing and immediately upon release of a decision, the Registrar sends the written Reasons for Decision to the applicant (or the agent for the applicant who filed the application) and all persons who requested, in writing to the Registrar, to be informed of the hearing result.

Upon appeal of a decision, the Registrar files the record of the Commission with the court within 30 days after receipt of the Notice of Appeal.

Documents filed at the hearing are public documents and as such may be made available upon request. When a request is made, the Registrar arranges for document viewing in accordance with procedure P500-002. If photocopies are required, standard process and fees apply as set out in P500-002.



SECTION	Procedures - Hearings
INDEX NO.	P520-763
TITLE	Records of Proceedings for Appeal Purposes
APPROVED BY	The Pension Commission of Ontario
PUBLISHED	March 1996 from PCO reception and Bulletin 6/4 (Fall - Winter 1997)
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### Records of Proceedings for Appeal Purposes

Any party to a proceeding before the Commission under sections 79, 89 or 90 of the Act, may appeal to Divisional Court from the Commission's decision pursuant to section 91 of the Act. The Registrar is responsible for providing a certified copy of the proceedings record of the Commission to the Court.

Subsection 91(2) of the *PBA* states:

"91(2) Upon the request of a party desiring to appeal to the Divisional Court and upon payment of the prescribed fee, the Commission shall furnish the party with a certified copy of the record of the proceeding, including the documents received in evidence and the decision or order appealed from."

Upon receipt of such a request for a certified copy of the record of the proceeding, the Registrar arranges for photocopying copies of the record in accordance with the P500-002. Alternatively, the party desiring to appeal to the Divisional Court may obtain a certified copy of the record from the Divisional Court after the record is filed by the Registrar.

Upon receipt of a Notice of Appeal of a decision, the Registrar files the record of the Commission with the Court within 30 days.

Section 20 of the *Statutory Powers Procedure Act* states:

"A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

- a) any application, complaint, reference or other documents, if any, by which the proceeding was commenced;
- b) the notice of any hearing;
- c) any interlocutory orders made by the tribunal;
- d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be used in evidence in any proceeding;
- e) the transcript, if any, of the oral evidence given at the hearing; and
- f) the decision of the tribunal and the reasons therefor, where reasons have been given."

The Registrar organizes the documents which form the record of the hearing and labels all documents clearly. A letter to the court itemizes each document contained in the record. The Registrar prepares and signs a certificate of the Commission certifying that the complete record is attached and has been compiled in accordance with section 20 of the *Statutory Powers Procedure Act*.

The Registrar arranges for delivery of the record to the court and informs the party appealing the decision and all parties to the hearing in writing that the record has been transmitted to the Court.

After an appeal is disposed of, the Registrar ensures that the record is retrieved from the court to the storage on-site.

SECTION	Procedures - Hearings
INDEX NO.	P520-780
TITLE	Pre-Hearing Conference Procedures
APPROVED BY	The Pension Commission of Ontario
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### Pre-Hearing Conference Procedures

Originally published in the August 1993 issue of the PCO Bulletin.

These procedures apply to all pre-hearing conferences held before the Pension Commission **except** those held pursuant to section 89 of the *PBA*. Rules of practice for proceedings under section 89 are found at P520-760.

#### The Reason for Pre-Hearing Conferences

The Commission recognizes the need for timely hearings that are both procedurally sound and efficiently run. Therefore, the following is designed to shorten the length of hearings and minimize delays, interruptions and adjournments while ensuring that the rights and interests of those affected are protected.

Where documentation is complete and the Commission has no questions, it may choose to decide a matter without a hearing. All matters that proceed to an oral hearing will be preceded by a pre-hearing conference. However, not all pre-hearing conferences will lead to an oral hearing as it may be determined that the hearing be done by way of written submission.

#### Purpose of the Pre-Hearing Conference

The pre-hearing conference does not constitute day one of the hearing. No evidence will be given and no opening statements made. The pre-hearing conference will:

- (1) resolve preliminary matters;
- (2) identify and simplify the matters in issue; and
- (3) establish procedures for the hearing.

It may also set hearing dates. Attempts at settling the matter will not be undertaken by the presiding member at the pre-hearing conference.

#### I Resolve Preliminary Matters

All preliminary matters are to be raised at the pre-hearing conference, including objections or questions relating to notice, jurisdiction, disclosure of documents, bias, standing or adjournments. The presiding member at the pre-hearing conference will not determine matters of substance. However, the presiding member will identify such issues and set out the method by which they will be resolved.

Objections or questions relating to preliminary matters will be entertained by the hearing panel during the hearing only if the circumstances relating to the objections or questions are unknown and cannot be reasonably foreseen at the time of the pre-hearing.

#### II Identify and Simplify Matters in Issue

Matters in issue will be settled, simplified and narrowed. The presiding member will identify those issues that the parties will be permitted to develop during the hearing.



### **III Establish Procedures for the Hearing**

The presiding member shall consider any procedural matter that may assist in the just, most expeditious and least expensive disposition of the proceeding. Commission policy on common procedural matters is set out below.

#### Transcripts

Commission policy is to conduct pre-hearings and hearings without court reporters. Parties may choose to hire their own. The Registrar shall assist with any physical arrangements necessary to accommodate court reporting. All costs associated with the service are to be borne by those engaging the reporters.

#### Evidence at the Hearing

As is apparent from the diagram of the Commission decision making process found at the end of this procedure, all documentation must be complete before a matter will be considered by the Commission.

It is Commission policy to hear no oral evidence, apart from that of experts (discussed below), thus evidence of witnesses shall be by way of affidavit. (Opposing parties may privately arrange for cross examination on affidavit and provide a transcript of the same to the presiding member or hearing panel.) Questions of witnesses by the hearing panel will normally be by way of written interrogatory. Answers are to be in writing and copied to all parties.

Any evidence that comes to light after the documentation is complete must be fully disclosed immediately to all parties and to the Commission.

#### Expert Evidence at the Hearing

It is Commission policy to accept expert evidence by way of written report submitted in advance of the hearing. A party who intends to present an expert report at the hearing shall, not fewer than 15 days before the pre-hearing conference, serve upon the other parties a summary signed by the expert setting out the expert's name, address, qualifications, a list of the issues which the expert's report will address and a summary of the expert's proposed evidence in respect of each issue. No fewer than 30 days before the hearing, the expert report(s) shall be served upon all parties and the Commission.

No expert report will be accepted at the hearing, except in exceptional circumstances and with leave of the Chair, unless the requirements described in this section have been met.

At the hearing, the party calling an expert shall file the expert report and shall be permitted to examine the expert in chief. Usual rights of cross-examination and reply questioning will follow. It is to be noted, however, that the evidence led shall not differ materially from that contained in the filed report.

Commission policy is to exclude expert witnesses from the hearing until they have given evidence. Where a party requires the attendance throughout the hearing of one or more expert witnesses, that expert witness or witnesses may remain in attendance. In such a circumstance, the expert witness or witnesses shall normally give evidence before any other witness is called on behalf of the party. No expert witness of a party shall remain in attendance when another expert witness for the same party is testifying.

The Commission reserves the right to call its own expert. In such an event, all parties shall be advised of the name, address and qualifications of the expert being retained and the nature of the issues to be addressed by the expert. Any report prepared by the expert shall be circulated to all parties as soon as is practicable after its receipt by the hearing panel.

#### The Order of Proceeding

The Applicant shall go first. The order of proceeding among the respondents shall be set by agreement of the respondents failing which as determined by the presiding member.

#### Observers

Hearings are open to the public.

### **IV Set Hearing Dates**

Following submissions on the amount of time reasonably needed to make each party's case, the presiding member at the pre-hearing shall set such time limits as is deemed necessary and appropriate. For example, the hearing may be restricted to argument and the time allowed for argument may be specified.

The presiding member may set the date, time and place of the hearing. Counsel are expected to attend with full particulars of their availability for hearing dates.

If, after consultation at the pre-hearing, it is not possible to schedule the hearing dates within a reasonable period of time, the dates will be assigned. Every attempt will be made to schedule the hearing within 60 days of the pre-hearing conference. Once hearing dates are set, adjournments will not be permitted except in extraordinary circumstances and with leave of the hearing panel.

## **V Participants at the Pre-Hearing Conference**

All those wishing to participate in the hearing or their counsel, if any, shall attend the pre-hearing. Those attending must be authorized to make binding agreements concerning the matters set out above. It is expected that counsel representing the parties at the hearing will be the counsel present at the pre-hearing conference.

Those persons who wish to participate in the hearing should file notice of such intention containing their name(s), address(es) and the nature of their interest(s) with the Registrar not later than 15 days before the date of the pre-hearing. The Registrar will serve copies of such notices on all parties.

Where notice of a pre-hearing conference has been given and a party does not attend, the presiding member may proceed in that party's absence and that party is not entitled to any further notice of the proceedings unless the presiding member otherwise directs.

## **VI Location and Duration of the Pre-Hearing Conference**

After consultation with the parties, the Registrar will assign a date for a pre-hearing conference and, generally, pre-hearing conferences will be held at the Pension Commission of Ontario offices at 250 Yonge Street, 29th Floor, Toronto ON M5B 2N7. Upon application and with the consent of all parties, pre-hearing conferences may be held by conference telephone call.

The normal time allocated for a pre-hearing conference will be 3 hours. Longer time needs should be brought to the attention of the Registrar at the time of scheduling of the pre-hearing.

## **VII Conduct of the Pre-Hearing Conference**

The pre-hearing conference will be conducted by one member of the Commission. With the consent of all parties, conveyed in writing to the Registrar at least 10 days before the pre-hearing, the presiding member at the pre-hearing may serve as a member of the hearing panel.

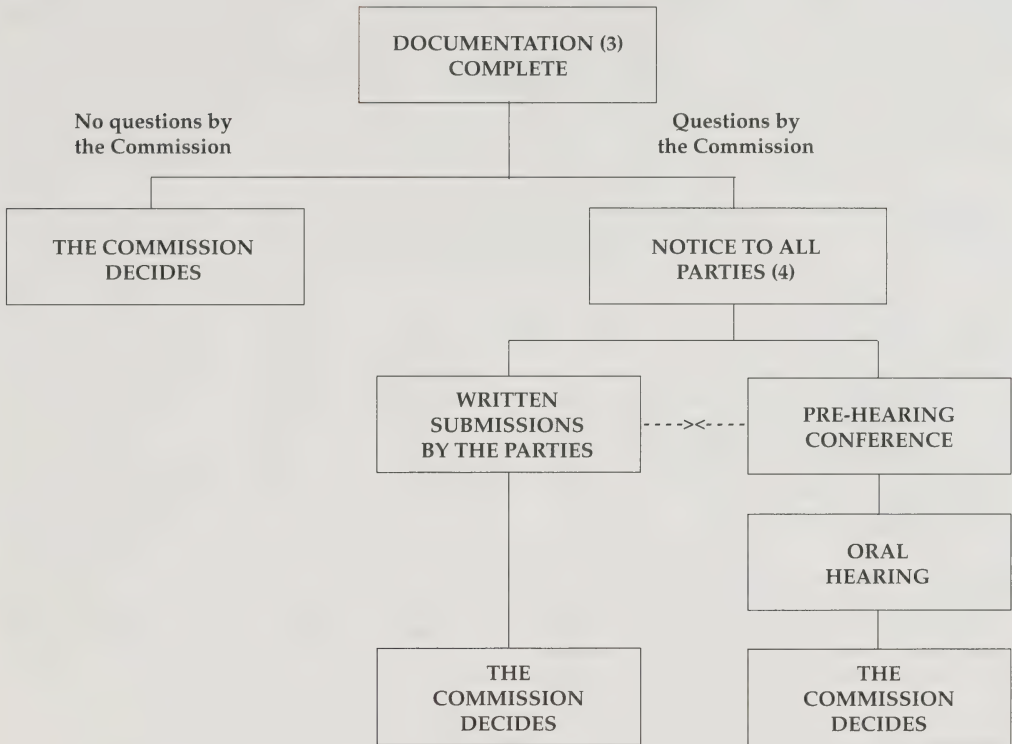
Counsel to the hearing panel may be present at the pre-hearing. If so, all parties will be so advised in advance of the pre-hearing.

## **VIII Results of the Pre-Hearing Conference**

At the conclusion of the pre-hearing conference the presiding person shall report, orally or in writing or both, the results of the pre-hearing conference. The report binds all parties to the pre-hearing conference. A copy of the report shall be placed before the hearing panel.

The report may form the basis for an order or orders of the Commission, which order(s) shall govern the conduct of the proceedings unless the Commission otherwise orders.

**THE COMMISSION (1)  
DECISION MAKING PROCESS (2)**



**Explanatory Notes to the Commission -  
Decision Making Process**

1. The "Commission" denotes the Commission tribunal, not the staff of the PCO.
2. This diagram does not apply to hearings held pursuant to s. 89 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8
3. All documentation is to be complete and in writing, and prepared by all parties. Documentation is not complete until a staff report is prepared by the staff of the PCO, provided to all parties and responses, if any, have been received by the staff. A staff report shall not be prepared until all documentation has been submitted by all parties. Documents that are normally part of the applicant's submissions include:
  - (i) an application;
  - (ii) all relevant documents and evidence;
  - (iii) responses, if any, to submissions of other parties;
  - (iv) comments on the staff report, if any;
  - (v) submissions on law, if any; and
  - (vi) a brief of authorities, if any.
4. If the Commission decides it needs further information before making its decision, the parties will be served with notice of the same. The notice will either request the parties to address specific questions by way of written submissions, or advise that the Commission has determined that a pre-hearing ought to be held. Where the notice indicates that a pre-hearing conference is to be held, it will indicate generally the purposes to be achieved through the pre-hearing conference.

Note: Formerly catalogued as XTRB-01



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SECTION	Procedures - Hearings
INDEX NO.	P520-781
TITLE	Role of Presiding Officer at Pre-Hearing Conference
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### **Role of the Presiding Officer at Pre-Hearing Conference**

*This was previously announced in the Spring 1994 PCO Bulletin (page 8).*

At the January, 1994 Commission meeting, the Commission considered the matter of the role of the presiding officer at a pre-hearing conference and the issue of whether the presiding officer should continue as a member of the hearing panel without requiring the consent of all parties to the hearing.

The Commission adopted the policy that the presiding officer at a pre-hearing conference has the right to continue as a member of the hearing panel.

Note: Formerly catalogued as XTRB-03

SECTION	Procedures - Hearings
INDEX NO.	P520-782
TITLE	Notice of Pre-Hearing Conference
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### Preparation of Notice of Pre-Hearing Conference

The purpose of the pre-hearing conference is to shorten the duration of hearings and minimize delays, interruptions and adjournments while ensuring that due regard is given to the rights and interests of all those affected by its proceedings. The purpose of the pre-hearing conference notice is to advise all interested parties that the pre-hearing conference is scheduled and, where known, to set out the matters which will be discussed. Parties have the opportunity to either:

- (1) reach agreement among themselves on matters such as jurisdiction, matters at issue, procedures to follow at hearing and an order of proceedings; or,
- (2) make representations to the panel chair prior to the pre-hearing conference to set out their arguments on the matters to be discussed.

Where documentation is complete and the Commission has no questions, it may choose to decide non-section 89 matters without a hearing. However, all matters that proceed to an oral hearing will be preceded by a pre-hearing conference.

The Chair assigns Commission members to a panel, ensuring that panel members do not have a conflict of interest relating to the matter to be heard. After the panel and a presiding member are identified, the

Registrar contacts the presiding member for proposed dates for the pre-hearing conference. The Registrar informs all interested persons of the proposed dates in writing. Parties must confirm their availability with the Registrar. When the dates are agreed upon, the Registrar drafts a notice of pre-hearing conference for review by the presiding member. If the parties cannot agree on a date which the presiding member views as reasonable in the circumstances, the presiding member will set a date for the hearing. The Registrar reserves the hearing room for the pre-hearing conference dates.

The notice of pre-hearing conference includes the following information:

- date, time and location of the pre-hearing conference;
- where known, the issues to be considered; and
- dates for the exchange of documents.

The Registrar sends the notice of pre-hearing conference to all interested parties by fax, first class mail or courier, if a fax is not available, and ensures that copies of all pre-hearing conference documents filed are sent to all interested persons. The Registrar sends copies of all filed pre-hearing conference documents to the presiding member at least 1 week prior to the pre-hearing conference date.

SECTION	Procedures - Hearings
INDEX NO.	P520-783
TITLE	Release of Pre-Hearing Conference Documents Filed with the Commission
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#### **Release of Pre-Hearing Conference Documents Filed with the Commission**

Documents filed with the Registrar for pre-hearing conferences are exchanged among the parties as required under the notice of pre-hearing conference.

The Registrar logs all documents received pertaining to a pre-hearing conference before the Pension Commission:

- (1) in the mail log indicating the date received and content; and
- (2) in the hearing record pertaining to the related pre-hearing conference.

The Registrar ensures that all persons named on the pre-hearing conference notice have been copied with the pre-hearing conference documentation filed with the Commission. All parties named on the pre-hearing conference notice are required to distribute copies of all documents filed with the Commission to each other.

If a member, former member, beneficiary, or anyone claiming to have interest in the hearing matter requests in writing information or access to pre-hearing documents, the Registrar, the Registrar will provide parties with access. The Registrar informs all parties of such requests so that everyone is apprised of all parties with an interest in the proceedings and in the matter to be heard.

At least one week prior to a pre-hearing conference, the Registrar sends a complete set of all pre-hearing documents filed in respect of the pre-hearing conference to the presiding panel member.



## Superintendent of Pensions Notices/Orders

### Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) Pension Plan for Employees of American Healthcare Mfg. (Canada) Ltd. who are Members of the Canadian Automobile, Aerospace & Agricultural Workers (CAW) and its Local 397, PN 0490326 (C-19292), (effective February 28, 1992), October 19, 1995
- 2) Retirement Plan for Employees of American Healthcare Mfg. (Canada) Ltd., PN 0988964 (C-104144), (effective February 28, 1992), October 19, 1995
- 3) Registered Retirement Plan for the Employees of Elan Corporation, PN 0567024 (C-14137), (effective May 3, 1991), October 11, 1995
- 4) Confederation Life Insurance Company Pension Plan for Canadian Field Representatives, (C-14329), (effective August 12, 1994), November 3, 1995
- 5) Pension Plan for Salaried Employees of Couchman Trade Bindery Limited, PN 379594 (C-13321), (effective February 28, 1994), January 30, 1996
- 6) Pension Plan for Employees of B.D. Wait Company Limited, C-4405, (effective August 30, 1989), March 1, 1996
- 7) Retirement Plan for the Employees of Enereau Investments Inc., PN 0929927 (C-100236), (effective July 1, 1994), May 2, 1996
- 8) Retirement Income Plan for Industrial Employees of Anova Inc., C-101254, (effective August 30, 1989), May 2, 1996
- 9) Pension Plan for Wage Employees of Airvector Inc., C-9338, (effective December 17, 1993), May 10, 1996
- 10) Confederation Life Insurance Company Pension Plan for Canadian Salaried Employees, PN 0277541 (partially wound up effective between July 1, 1993 and August 15, 1994), July 15, 1996
- 11) Confederation Life Insurance Company Pension Plan for Canadian Salaried Employees, PN 0277541 (effective October 7, 1994), July 15, 1996

### Amended Notice of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, [Notice of Proposed Wind-up Order], issued an amended Notice of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) Confederation Life Insurance Company Pension Plan for Canadian Field Representatives, C-14329 (effective between October 31, 1993 and August 12, 1994), July 15, 1996

### Notice of Proposal to Make an Order

The Superintendent, pursuant to section 87 of the PBA, issued a Notice of Proposal to Make an Order pursuant to subsection 9(2) of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) Clergy Retirement Pension Plan of the Diocese of Hamilton, September 16, 1996.

### Orders - Section 69 of the PBA

The Superintendent issued Orders, pursuant to section 69 of the PBA [Wind-up Orders], as follows (effective date of wind up and date of order indicated, respectively):

- 1) Retirement Plan for the Employees of Bectar Corporation, PN 0954271 (C-101954), (effective December 18, 1992), October 19, 1995
- 2) Pension Plan for Salaried Employees of King Equipment Manufacturing Corp., PN 0340273 (C-3155), (effective February 26, 1993), November 1, 1995
- 3) Pension Plan for Branch Hourly-Rated Employees of King Equipment Manufacturing Corp., PN 0340257 (C-3156), (effective February 26, 1993), November 1, 1995
- 4) The King Equipment Manufacturing Corp. C.A.W. Retirement Income Plan, PN 0340265 (C-3157), (effective February 26, 1993), November 1, 1995
- 5) Stelco Retirement Plan for Salaried Employees, PN 0338509 (C-6968), (partially wound up effective April 1, 1990), March 28, 1996
- 6) Pension Plan for Salaried Employees of Couchman Trade Bindery Limited, PN 0379594 (C-13321), (effective February 28, 1994), March 29, 1996
- 7) Pension Plan for Employees of B.D. Wait Company Limited, C-4405, (effective August 30, 1989), April 23, 1996
- 8) Pension Plan for Designated Employees of Tate Access Floors Inc., C-103686 (effective March 31, 1991), May 9, 1996
- 9) Pension Plan for Wage Employees of Airvector Inc., C-9338 (effective December 17, 1993), July 10, 1996
- 10) Retirement Income Plan for Industrial Employees of Anova Inc., C-101254 (effective August 30, 1989), July 8, 1996
- 11) Retirement Plan for the Employees of Enereau Investments Inc., PN 0929927 (C-100236), (effective July 1, 1994), July 8, 1996

### Notices of Proposal to Refuse to Approve a Partial Wind Up Report - Subsection 70(5) of the PBA

The Superintendent, issued Notices of Proposal to Refuse to Approve a Partial Wind Up Report pursuant to subsection 70(5) of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) Caterpillar of Canada Ltd. Pension Plan for Hourly-Rated Members of C.A.W. Local 252, PN 0553214, October 3, 1995
- 2) Caterpillar of Canada Ltd. Pension Plan for Bi-Weekly Employees, PN 0997494, October 3, 1995

### Notices of Proposal to Refuse to Approve a Wind Up Report - Subsection 70(5) of the PBA

The Superintendent, issued Notices of Proposal to Refuse to Approve a Wind Up Report pursuant to subsection 70(5) of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) Pension Plan for Unionized Employees of Asea Brown Boveri Inc. located at London, Burlington and St-Jean Divisions, PN 683433, July 10, 1996

## Tribunal Activities

This section summarizes matters related to the Pension Commission of Ontario.

### PCO Board Members

The following members comprise the Commission: Monica J. Townson, Chair (Acting), Darcie L. Beggs, Shiraz Y.M. Bharmal, Kathryn M. Bush, M. Elizabeth Greville, C. S. (Kit) Moore, Joyce A. Stephenson

### 1996 and 1997 Dates for Commission Meetings

The Pension Commission will convene on the following Thursdays in 1996: November 21, and December 12.

The Pension Commission will convene on the following Thursdays in 1997:

Commission Meeting Date	Deadlines for Submission of Applications
January 23, 1997	October 15, 1996
February 27, 1997	November 29, 1996
March 27, 1997	December 27, 1996
April 24, 1997	January 24, 1997
May 22, 1997	February 21, 1997
June 26, 1997	March 28, 1997
July 31, 1997	May 2, 1997
Aug 21, 1997 - cancelled	not applicable
September 18, 1997	June 20, 1997
October 23, 1997	July 25, 1997
November 20, 1997	August 22, 1997
December 11, 1997	September 12, 1997

## Hearings Before the Commission

### **Pension Plan for Unionized Employees of Asea Brown Boveri Inc. Located at London, Burlington and St. Jean, PN 683433 - Superintendent of Pensions' Proposal to Refuse to Approve a Wind Up Report, dated July 10, 1996**

Request by Asea Brown Boveri Inc. ("ABB") for a hearing pursuant to section 89 of the Pension Benefits Act, with respect to a proposal dated July 10, 1996, of the Superintendent of Pensions to refuse to approve a wind up report filed by ABB. By letter dated September 4, 1996, ABB requested that the Registrar postpone setting a date for the pre-hearing conference.

### **Pension Plan for Employees of Brantford Packers Limited, PN 0556381 - Superintendent of Pensions' Proposal to Revoke and Refuse Registration dated July 14, 1995**

Request by counsel for Brantford Packers Limited and Mutual Life Assurance Company of Canada for a hearing pursuant to subsection 89(6) of the Pension Benefits Act. A pre-hearing conference scheduled for October 19, 1995 was adjourned sine die. By letter dated February 22, 1996, this request for a hearing was formally withdrawn.

### **Caterpillar of Canada Ltd. Pension Plan for Hourly-Rated Members of C.A.W. Local 252, PN 0553214 and Caterpillar of Canada Ltd. Pension Plan for Bi-Weekly Employees, PN 0997494 - Notices of Proposal to Refuse to Approve a Partial Wind Up Report, dated October 3, 1995**

A request by counsel for Caterpillar of Canada Ltd. for a hearing pursuant to subsection 89(6) of the Pension Benefits Act with respect to Proposals dated October 3, 1995 of the Superintendent of Pensions to refuse to approve a partial wind up report. A hearing was held on April 30 and May 1, 1996. Decision with reasons was released on May 16, 1996.

### **City of Ottawa Superannuation Fund, PN 0336701 (C-006131)**

A request by counsel for members of the City of Ottawa Superannuation Fund (COSF) for a hearing pursuant to subsection 87(1) and 89(2) of the Pension Benefits Act, regarding the Superintendent's approval of the registration of the amendment relating to early retirement benefits on September 21, 1995. A pre-hearing conference was held on March 21, 1996 by telephone conference call. The hearing will be held on April 29 and 30, and May 13 and 14, 1997.

### **Clergy Retirement Pension Plan of the Diocese of Hamilton - Notice of Proposal to make an Order to apply for registration of the Pension Plan, dated September 16, 1996**

A request by counsel for The Roman Catholic Episcopal Corporation of the Diocese of Hamilton for a hearing pursuant to section 89 of the Pension Benefits Act, regarding the Superintendent's proposal to order the Diocese of Hamilton to apply to the Superintendent of Pensions for registration of the Pension Plan. A pre-hearing conference will be held on March 5, 1997.

### **Confederation Life Insurance Field Representatives Plan, PN 0014329 (C-14329) - Notice of Proposal to Make an Order that the Pension Plan be wound up, dated November 3, 1995, amended July 15, 1996**

A request by The Former Confed Employees Association for a hearing pursuant to section 89 of the Act. The applicant seeks Orders (1) that the Notice of Proposal to make an Order be varied so that the Plan be wound up in whole effective between July 1, 1993 and August 12, 1994; and (2) that the Superintendent be required to vary the Notice and issue the Order as set out above. By letter dated December 20, 1996, this request for a hearing was formally withdrawn.

### **Confederation Life Insurance Canadian Salaried Pension Plan, PN 0277541, Notice of Proposal to make an Order that the Pension Plan be wound up, dated July 15, 1996**

A request by The Former Confed Employees Association for a hearing pursuant to section 89 of the Act. The applicant seeks Orders (1) that the Notice of Proposal to make an Order be varied so that the Plan be wound up in whole effective between July 1, 1993 and August 31, 1996 or such further date up to and including the last date where employees ceased to work for Confederation Life Insurance Company ("CLIC") in liquidation; and (2) that the Superintendent be required to vary the Notice and issue the Order as set out above.

The applicant has advised the Registrar that it is trying to resolve outstanding issues through discussions with the Plan administrator, Deloitte & Touche Inc., and the agents for the Liquidators of CLIC and Confederation Trust Company. A pre-hearing conference will be scheduled when the applicant confirms that a hearing will in fact be necessary.

### **Confederation Life Insurance Canadian Salaried Pension Plan, PN 0277541, Notice of Proposal to make an Order that the Pension Plan be wound up, dated July 15, 1996**

An individual salaried plan members has also requested a hearing pursuant to section 89 of the Act as he does not agree with the proposed wind up dates. By letter dated October 7, 1996 this request for a hearing was formally withdrawn.



#### **IBEW, Local 303, Pension Plan Trust Fund, PN 0592428**

Request by counsel for the Trustees of the IBEW, Local 303, Pension Plan Trust Fund, for a hearing pursuant to section 89 of the PBA regarding the refusal of the Superintendent to make an order that (a) the Union President or any member of the Local Executive of IBEW Local 303 cease to interfere with the business and affairs of the Pension Plan and Pension Fund; (b) no "just cause" has been properly made out under the terms of the Plan's Agreement and Declaration of Trust; and, (c) that along with the Union President and business manager of IBEW Local 303, Messrs. Allan Collee, James Frolick, Bruce Coultas and Walter Lay constitute the Board of Trustees of the IBEW Local 303 Pension Plan Trust Fund. A pre-hearing conference was held on May 9, 1996. A hearing for preliminary jurisdictional arguments was scheduled for October 16 and 17, 1996. By letter dated October 7, 1996 this request for a hearing was formally withdrawn.

#### **Imperial Oil Limited Retirement Plan (1988), PN 0347054, and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., PN 0344002 - Proposed Order of the Superintendent for a Partial Wind Up of the Plans**

Request by Imperial Oil for a hearing with respect to the proposed Order of the Superintendent of Pensions dated March 16, 1995 regarding a partial wind up of the above plans. A hearing was held on December 4, 5, 6 and 7, 1995, January 16, 17, 18, 29 and 30, April 24 and 26, 1996. Decision with reasons was released on May 27, 1996.

#### **Molson Breweries Pension Plan for Toronto Brewery Workers PN 0379677 (C-10945)(Fleet Street Plan) and Molson Breweries Pension Plan, PN 0334094 (C-4116)(Etobicoke Plan)**

Request by counsel for the Canadian Union of Brewery and General Workers, Component 325, Local 325, for a hearing pursuant to section 89 of the PBA regarding the refusal of the Superintendent to make an order requiring the wind up of the Toronto Plan and the decision of the Superintendent regarding the combination of the two Plans and the transfer to the Etobicoke Plan. A pre-hearing conference was held on April 18, 1996. The Commission heard preliminary jurisdictional arguments on November 13 and 14, 1996.

An amended decision with reasons was released on January 23, 1997. At a pre-hearing conference held on February 4, 1997, the panel agreed to adjourn this matter sine die until the Superintendent of Pensions has made a decision in relation to the 1990 transfer. Any party may ask that the matter be re-convened.

#### **Public Service Pension Plan, PN 0208777 (C-6672)**

Appeal by Ontario Public Service Employees Union ("OPSEU") to the Commission with respect to the refusal by the Superintendent of Pensions to make an order requested by OPSEU that the Ontario Pension Board and Management Board Secretariat provide all members of the Public Service Pension Plan with 1992 annual statements by March 31, 1994. AMAPCEO continued the hearing in the place of OPSEU. A pre-hearing conference was held April 14, 1994 and continued June 16, 1994.

A hearing was held on April 25, 1996 to determine whether the proceeding should be dismissed for delay. At the request of parties at the hearing and given advice from counsel to AMAPCEO advising that AMAPCEO does not intend to proceed in this matter and no objections raised by any of the other parties, the Pension Commission of Ontario dismissed the request for a hearing by AMAPCEO.

#### **Sheet Metal Workers' Local Unions and Councils Pension Plan PN 0393314 (C-15249)**

Request for hearing with respect to a decision of the Superintendent of Pension dated May 25, 1994 refusing to issue an order that the plan be administered in accordance with section 8(1)(e) and refusing to reject a plan amendment. A pre-hearing conference was held on September 8, 1994. A hearing date was set but adjourned sine die on consent.

A hearing was held on April 25, 1996, to determine whether the proceeding should be dismissed for delay. Upon consideration of the submissions of the parties, the Pension Commission of Ontario gave its decision that the matter be adjourned for a period of one year. If no steps are taken within the year to move the matter forward, or the parties do not show cause why the matter should not be dismissed, then the matter will be dismissed for delay.

#### **Pension Plan for Employees of Sherwood Communications Group Limited and Its Subsidiary and Associated Companies PN 0009860 (C-9860)**

Request by counsel for Jim West for a hearing pursuant to section 89 of the PBA. The party requesting the hearing seeks orders: (1) That the Order of the Superintendent of Pensions for Ontario dated February 15, 1996 approving the Wind-up Report with respect to this plan dated December 1992, as amended by the supplement dated May 1995, be set aside; (2) That the amendment to the plan dated May 16, 1991, be set aside; (3) That the plan be partially wound-up commencing in March 1986; (4) That an Order requiring that a new wind-up report with an effective date of March 1986 to March 1989 be prepared. A pre-hearing conference was held on September 27, 1996. Hearing dates will be scheduled.



**Standard Trustco Limited Employees' Retirement Plan, PN 00556340 (C-11385)**

Request by counsel for Ernst & Young Inc., the Liquidator of Standard Trust Company, for a hearing pursuant to subsection 89(6) of the PBA, regarding the Superintendent's Proposal to Make an Order respecting the wind up of the Plan. By letter dated March 11, 1996 this request for a hearing was formally withdrawn.

**Pension Plan for Designated Employees of Tate Access Floors Inc. (C-113686)**

Request for a hearing to review of Notice of Proposal to Make an Order issued by the Superintendent of Pensions on March 31, 1992 that the plan be wound up. The matter was adjourned *sine die* in July 1992 on consent.

A hearing was held on April 25, 1996, to determine whether the proceeding should be dismissed for delay. Upon consideration of the submissions of the parties and given that the applicant, Tate Access Floors Inc., did not appear and at the request of the parties in attendance, the Pension Commission of Ontario gave its decision that the matter be dismissed for delay. The Commission ordered the Superintendent of Pensions to wind up the Pension Plan for Designated Employees of Tate Access Floors Inc., C-113686 effective March 31, 1991.

**Pension Plan for Employees of Zurich Canadian Holdings Limited, PN 0319517 (C-2956)**

A request by counsel for Scott Warner for a hearing pursuant to section 89 of the Act. The party requesting the hearing seeks orders: (1) That the Superintendent be directed to issue an Order requiring that the Pension Plan for Employees of Zurich Canadian Holdings Limited (the "Pension Plan") be partially wound up in respect of those members of the Pension Plan that ceased to be employed by Zurich Canada from January 1, 1991 to December 31, 1994. A pre-hearing conference will be scheduled.

**Commission Decisions - Applications  
Approved Since December, 1995**

**Surplus Withdrawal on Plan Wind Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909 (as amended by O. Reg. 743/91) and s. 78(1) and 79(3) of the Act**

At the Commission meeting held January 25, 1996, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan of Kidd Creek Mines Ltd. for W.E.P. Fearn, PN 0953257 (C-103269)**

Payment of surplus to Falconbridge Limited, from the Pension Plan of Kidd Creek Mines Ltd. for W.E.P. Fearn, PN 0953257 (C-103269), in the amount of \$2,028 as at November 1, 1986 plus investment earnings thereon to the date of payment, less expenses, if any.

**(b) Retirement Plan for Salaried Employees of Anaconda Canada Exploration Ltd., PN 0216341 (C-4934)**

Payment of surplus to ARCO Chemical Canada Inc., from the Retirement Plan for Salaried Employees of Anaconda Canada Exploration Ltd., PN 0216341 (formerly C-4934), in the amount of \$798,901.50 as at October 31, 1994 plus investment earnings thereon to the date of payment.

The Commission accepted the applicant's arguments on how the application satisfied clause 79(3)(b) of the Act based on the plan language. The Commission rejected the reasoning in Ioy Technologies Canada Inc. to the effect that normal rules of tracing may not apply in the case of pension trusts.

**(c) Pension Plan for Designated Employees of Sai Woo Limited, PN 0404400 (C-16182)**

Payment of surplus to Sai Woo Limited, from the Pension Plan for Designated Employees of Sai Woo Limited, PN 0404400 (formerly C-16182), in the amount of \$277,316.24 as at October 3, 1994 plus investment earnings thereon to the date of payment.

The Commission noted that although the application did not comply with section 78(2) of the Act and subsection 28(5.1) of the regulations, the eight executive members participating in the plan have certified that they are aware of the notice requirements of the legislation, that all relevant information was fully disclosed to them and that they consented to the refund of surplus to Sai Woo Limited.

**(d) Pension Plan for Designated Employees of Staticon Limited, PN 0401018**

Payment of surplus to Staticon Limited, from the Pension Plan for Designated Employees of Staticon Limited, PN 0401018, in the amount of \$334,200 as at December 31, 1993 plus investment earnings thereon to the date of payment.

**(e) Fiat Products Limited Employees Pension Plan, PN 0379115**

Payment of surplus to Fiat Products Limited, from the Fiat Products Limited Employees Pension Plan, PN 0379115, in the amount of approximately \$70,000 as at July 1, 1993 adjusted to reflect investment earnings or losses and expenses.

At the Commission meeting held January 25, 1996, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission denied consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) The Pension Plan for the Employees of Fashion Jewellery Company, PN 0367730 (C-12823)**

Denied Commission consent to a payment of surplus to Fashion Jewellery Company, from The Pension Plan for the Employees of Fashion Jewellery Company, PN 0367730 (formerly C-12823), in the amount of \$15,287.35 as at March 1, 1992 plus investment earnings thereon to the date of payment.

The reasons for the decision are as indicated below:

The consent requirements of clause 8(1)(b)(ii) have not been satisfied as no members have consented to the refund. The consent requirement must be met before the Commission can give its consent.

Moreover, the application does not demonstrate how it has met the requirements of subsection 79(3)(b) of the Act which requires that "...the pension plan provides for payment of surplus to the employer on the wind up of the pension plan". Only the most recent section of the plan text effective January 1, 1987 is referenced. To meet these requirements, all relevant provisions of the insurance contract(s) or prior plan provisions must be set out and explained.

Finally, the Commission was not satisfied that the notice requirements of clause 78(2)(a) of the Act have been met. This clause requires that notice of the application must be issued to "...each member and former member of the pension plan to which the pension fund relates". Notice of this application was transmitted only to the members and former members whose addresses were known. No attempt appears to have been made to locate all members and former members of the pension plan either through a newspaper notice or by other means.

At the Commission meeting held February 21, 1996, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan of TESC Contracting Limited For F. Lachance, PN 0691162**

Payment of surplus to TESC Contracting Limited, from the Pension Plan of TESC Contracting Limited For F. Lachance, PN 0691162, in the amount of \$84,298 as at July 20, 1992 plus investment earnings thereon to the date of payment.

**(b) Pension Plan of TESC Contracting Limited For T.J. Lachance, PN 0691154**

Payment of surplus to TESC Contracting Limited, from the Pension Plan of TESC Contracting Limited For T.J. Lachance, PN 0691154, in the amount of \$134,861 as at July 20, 1992 plus investment earnings thereon to the date of payment.

**(c) Retirement Plan for the Employees of Stoney Creek Tire Limited, PN 0413203**

Payment of surplus to Stoney Creek Tire Limited, from the Retirement Plan for the Employees of Stoney Creek Tire Limited, PN 0413203, in the amount of \$585,234 as at March 1, 1990 plus investment earnings thereon to the date of payment.

At the Commission meeting held April 25, 1996, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) The Pension Plan of Nestle Enterprises Limited for B.C. Parker, PN 0973917 (C-100316)**

Payment of surplus to Nestle Canada Inc., from The Pension Plan of Nestle Enterprises Limited for B.C. Parker, PN 0973917 (formerly C-100316), in the amount of 100% of the surplus in the Plan (approximately \$117,503) as at October 31, 1992 plus investment earnings thereon to the date of payment.

**(b) Hourly Employees Retirement Income Plan of Colgate-Palmolive Canada Inc., PN 0995241 (C-103341)**

The Pension Commission of Ontario consents pursuant to subsection 78(1) of the Act and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended, to a payment of surplus to Colgate-Palmolive Canada Inc., from the Hourly Employees Retirement Income Plan of Colgate-Palmolive Canada Inc., Registration Number 0995241 (C-103341), in the amount of 40% of the surplus assets remaining in the Plan following the payment of all benefits arising under the Plan and following the payment of all expenses associated with the above-noted application.

**(c) Pension Plan for Employees of R. & J. Machine & Engineering Limited, PN 0406934**

Payment of surplus to R. & J. Machine & Engineering Limited, from the Pension Plan for Employees of R. & J. Machine & Engineering Limited, Registration Number 0406934, in the amount of \$145,459 at December 31, 1992, plus/minus investment earnings/losses thereon to the date of payment and the deduction of any expenses.

**(d) Spae-Naur Inc. Pension Plan for Derek Cairns, C-18813**

Payment of surplus to Spae-Naur Inc., from the Spae-Naur Inc. Pension Plan for Derek Cairns, C-18813, in the amount of \$38,500 plus investment earnings thereon to the date of payment.

The Commission conditionally gave its consent based on the December 21, 1995 letter of the applicant's actuary, Mr. Frederick J. Thompson, FSA, FCIA, which states that the surplus in the amount of \$38,500 will be paid to Mr. Cairns as a retiring allowance.

**(e) H. & A. Selmer Ltd. Pension Plan, PN 0437301**

Payment of surplus to H. & A. Selmer Ltd., from the H. & A. Selmer Ltd. Pension Plan, PN 0437301 (C-103812), in the amount of 50% of the surplus in the plan (approximately \$56,748 as at October 1, 1992) plus investment earnings thereon to the date of payment.

**(f) The Gemini Group Limited Pension Plan for Executives, PN 0997155**

Payment of surplus to the Gemini Group Automated Distribution Systems Inc., from the

Gemini Group Limited Pension Plan for Executives, PN 0997155 (C-103410), in the circumstances described herein.

The surplus in the Plan as at July 31, 1994 is estimated in the Wind-up Report to be \$165,854 before applicable adjustments to the date of distribution. In this Application, "Surplus" means the surplus as at the Wind-up Date after applicable adjustments to the date of distribution as required by the PBA and the Surplus Sharing Agreement. The Surplus is estimated to be approximately \$114,000.

The proposed withdrawal of a portion of Surplus by the Applicant and the distribution of the remaining Surplus to these individuals who are members, former members and other persons entitled to accrued benefit payments from the Plan fund as at July 31, 1994 (the "Wind-up Date") will be in accordance with the terms of an agreement (the "Surplus Sharing Agreement") dated as of April 18, 1995 between the Applicant and consenting Plan Members. The Surplus Sharing Agreement provides that the Applicant will receive a Surplus distribution of about 70% (or about \$79,800), as adjusted for interest, wind-up expenses such as actuarial fees and legal fees, and other adjustments. Plan members will receive, in the aggregate, about 30% (or about \$34,200), as similarly adjusted.

At the Commission meeting held May 30, 1996, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Gaston Malette, PN 0967760**

Payment of surplus to Malette Inc., from the Pension Plan for Gaston Malette, PN 0967760, in the amount of 100% of the surplus in the Plan (approximately \$183,781.00 as at November 3, 1993) plus investment earnings thereon to the date of payment, less all expenses associated with the application.

**(b) Retirement Plan for Employees of Windsor Print & Litho Ltd., PN 0400309**

Payment of surplus to Windsor Print & Litho Ltd., from the Retirement Plan for Employees of Windsor Print & Litho Ltd., PN 0400309, in the amount of 100% of the surplus in the Plan (approximately \$43,535 as at November 1, 1992) plus investment earnings thereon to the date of payment, less all expenses.



**(c) Pension Plan for Employees of Jack Aaron Company Limited, PN 0412148**

Payment of surplus to Jack Aaron and Company Limited, from the Pension Plan for Employees of Jack Aaron Company Limited, PN 0412148, in the amount of 50% of the total surplus of \$610,172 in the Plan (approximately \$305,086 as at February 6, 1995), plus investment earnings thereon to the date of payment, less all expenses related to the wind up and surplus distribution.

**(d) Pension Plan of Donalco Inc. for Peter L. Berry, PN 0992826 (C-102153)**

Payment of surplus to Donalco Inc., from the Pension Plan of Donalco Inc. for Peter L. Berry, PN 0992826 (C-102153), in the amount of 100% of the surplus in the Plan (approximately \$52,065 as at December 31, 1989) plus investment earnings thereon to the date of payment.

**(e) Raytheon Canada Limited Personal Pension Plan No. 1, PN 0960856 (C-102259)**

Payment of surplus to Raytheon Canada Limited, from the Raytheon Canada Limited Personal Pension Plan No. 1, PN 0960856 (C-102259), in the amount of 100% of the surplus in the Plan (approximately \$42,528 as at October 31, 1994) plus investment earnings thereon to the date of payment, which will be used by the employer to fund a retiring allowance for the member.

**(f) Allis-Chalmers Canada Inc. Salaried Employees Retirement Plan, PN 0335901 (C-20993)**

Payment of 100% of the surplus to A-C Reorganization Trust, from the Allis-Chalmers Canada Inc. Salaried Employees Retirement Plan, PN 0335901 (formerly C-20993), (approximately \$187,789 as at December 31, 1994) plus investment earnings thereon to the date of payment less any outstanding fees payable to the Pension Commission of Ontario, the plan actuaries (in excess of those provided for in the wind up report) and the plan auditors.

The Commission consented to the payment of all the surplus to A-C Reorganization Trust on condition that the surplus be used in accordance with the terms of the surplus agreement whereby the surplus paid to A-C Reorganization Trust is to be used to purchase life insurance and survivor income benefits promised to some retirees and deferred vested members at the termination of their employment. Any surplus remaining after the benefit purchase shall be distributed among all retirees and deferred vested members.

**(g) Pension Plan for Employees of First Boston Canada Limited, PN 0972018, (C-103421)**

Payment of surplus to CS First Boston (Canada) Inc., from the Pension Plan for Employees of First Boston Canada Limited, PN 0972018 (C-103241), in the amount of 73.27% of the surplus in the Plan (approximately \$589,383 as at December 31, 1993), plus investment earnings thereon to the date of payment and adjustments for expenses.

At the Commission meeting held June 27, 1996, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Freudenberg Nonwovens Inc. Designated Employees' Retirement Plan, PN 0587576**

Payment of surplus to Freudenberg Nonwovens Inc., from the Freudenberg Nonwovens Inc. Designated Employees' Retirement Plan, PN 0587576, in the amount of 50% of \$82,855 (the amount of surplus in the Plan as at October 31, 1995, the effective date of the wind-up) plus or minus, as the case may be, 50% of all investment gains or investment losses thereon from the wind-up date to the date of payment.

**(b) Pension Plan for Designated Employees of Flavour Ingredients Ltd., C-100110**

Payment of surplus to Flavour Ingredients Limited from the Pension Plan for Designated Employees of Flavour Ingredients Ltd., C-100110, in the amount of 100% of the surplus in the Plan (approximately \$8,700 as at February 1, 1988) plus investment earnings thereon to the date of payment and adjustments for expenses.

**(c) Pension Plan for the Employees of Inmet Mining Corporation Group, PN 0467860**

Payment of surplus to Metall Chemical Holdings Limited, from the Pension Plan for Employees of Inmet Mining Corporation Group, PN 0467860, in the amount of approximately \$31,829 as at September 30, 1995, plus investment earnings thereon to the date of payment, less expenses.



**(d) The Retirement Plan A for the Employees of Queenston Chev-olds/A Division of Setay Motors Inc., PN 0294389 (C-8236)**

Payment of surplus to Queenston Chev-olds/A Division of Setay Motors Inc., from The Retirement Plan Part A for the Employees of Queenston Chev-olds/A Division of Setay Motors Inc., PN 0294389 (C-8236), in the amount of 100% of the surplus in the Plan (approximately \$70,275 as at June 1, 1994) plus investment earnings thereon to the date of payment and less all expenses associated with the Application.

**(e) Murray and Company Limited Pension Plan for Designated Employees, PN 0414896**

Payment of 100% of the surplus in the Plan to Murray and Company Limited, from the Murray and Company Limited Pension Plan for Designated Employees, PN 0414896, (approximately \$94,172.27 as at December 31, 1995) plus investment earnings thereon to the date of payment.

**(f) Nor Baker Industries Limited Retirement Plan, PN 0227272**

Payment of surplus to Nor Baker Industries Limited, from the Nor Baker Industries Limited Retirement Plan, PN 0227272, in the amount of 50% of the surplus in the Plan as at December 31, 1993, the effective date of the wind-up, (50% of approximately \$1,180,904) plus 50% of investment earnings thereon to the date of payment and minus 50% of (i) the legal fees and disbursements incurred by the Applicant and by the members and former members of the Plan represented by J. David Vincent and (ii) all other costs and expenses related to the continuing administration and wind-up of the Plan.

**(g) Pension Plan for Salaried Employees of Chromalox Inc., PN 005098**

Payment of surplus to Coopers & Lybrand Limited (the Receiver), from the Pension Plan for Salaried Employees of Chromalox Inc., PN 0050981, in the amount of approximately 34% of the surplus in the Plan (approximately \$554,196 as at December 31, 1995), plus investment earnings thereon to the date of payment and less any other adjustments such as fees.

At the Commission meeting held June 27, 1996, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission did not consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) The Retirement Plan for Employees of Rubberset Company (Canada), Division of Sherwin-Williams Canada Inc., Represented by the United Steelworkers of America, Local 9213, PN 0302588**

Not consent to the application of Rubberset Company (Canada), Division of Sherwin-Williams Canada Inc. pursuant to subsection 78(1) of the Act and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended, to a payment of surplus to the applicant, from The Retirement Plan for Employees of Rubberset Company (Canada), Division of Sherwin-Williams Canada Inc., represented by the United Steelworkers of America, Local 9213, PN 0302588.

The reasons for this decision are as follows:

The applicant did not satisfy the requirements of section 78(2) of the Act as there was no evidence that notice was sent to the Union. Furthermore, there was no evidence that the plan members were not represented by the Union at the time of the surplus sharing agreement. Consequently, since it did not provide written consent from the Union, the applicant has not demonstrated that subsection 8(1)(b)(ii) has been satisfied.

At the Commission meeting held July 25, 1996, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Harrison Muir Limited Personal Pension Plan No. 1, PN 0993329**

Payment of surplus to Harrison Muir Limited, from the Harrison Muir Limited Personal Pension Plan No. 1, PN 0993329, in the amount of 100% of the surplus in the plan (approximately \$28,683.33 as at December 31, 1993) plus investment earnings thereon to the date of payment less adjustments for expenses.

**(b) Earle Pullan Real Estate Limited Executive Employees' Pension Plan, PN 0407452 (C-16013)**

Payment of surplus to Earle Pullan Real Estate Limited from the Earle Pullan Real Estate Limited Executive Employees' Pension Plan, PN 0407452 (C-16013), in the amount of 100% of the surplus in the Plan (approximately \$319,606 as at February 7, 1989) plus investment earnings thereon to the date of payment.

**(c) Pension Plan for Executives of Oshawa Pattern & Model Ltd., PN 0416511**

Payment of surplus to Oshawa Pattern & Model Ltd., from the Pension Plan for Executives of Oshawa Pattern & Model Ltd., PN 0416511, in the amount of 100% of the surplus in the plan (approximately \$40,790 as at May 1, 1993), plus investment earnings thereon to the date of payment.

**(d) Revised Pension Plan for Employees of New Zealand Insurance Company Limited, PN 0531616**

Payment of surplus to The New Zealand Insurance Company Limited, from the Revised Pension Plan for Employees of New Zealand Insurance Company Limited, PN 0531616, in the amount of 100% of the surplus in the Plan (approximately \$463,829 as at December 31, 1995) adjusted for investment earnings and actual expenses in connection with the wind up of the pension plan as at December 31, 1986.

**(e) Steep Rock Resources Inc. Non-Contributory Pension Plan, PN 0345470**

Payment of surplus to Steep Rock Resources Inc., from the Steep Rock Resources Inc. Non-Contributory Pension Plan, PN 0345470, in the amount of the lesser of:

1. 50% of \$1,774,899, (the amount of surplus in the Plan as at June 1, 1995, the effective date of the wind-up), plus 50% of investment earnings thereon to the date of payment, minus 50% of all costs and expenses incurred on or after July 14, 1993 in connection with the continuing administration and wind-up of the Plan excluding the fees and disbursements of Koskie Minsky but including the fees and disbursements of counsel to the Applicant and Sobeco Ernst & Young Inc., actuary for the Applicant; and,

2. 55% of \$1,774,899, plus 55% of investment earnings thereon to the date of payment, minus 100% of all costs and expenses incurred on or after July 14, 1993 in connection with the continuing administration and wind-up of the Plan excluding the fees and disbursements of Koskie Minsky but including the fees and disbursements of counsel to the Applicant and Sobeco Ernst & Young Inc., actuary for the Applicant;

minus 100% of Koskie Minsky's fees up to \$10,000 and disbursements.

At the Commission meeting held September 19, 1996, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for the Supervisory and Executive Employees of Charcoal Steak House Inc., PN 549378**

Payment of surplus to Charcoal Steak House Inc., from the Pension Plan for the Supervisory and Executive Employees of Charcoal Steak House Inc., PN 549378, in the amount of 75% of the surplus in the plan (approximately \$104,226 as at November 30, 1993) plus investment earnings thereon to the date of payment.

**(b) Pension Plan of Scott's Hospitality Inc. for E.W. Black, PN 978965**

Payment of surplus to Scott's Hospitality Inc. from the Pension Plan of Scott's Hospitality Inc. for E.W. Black, Registration Number 978965, in the amount of 94.73% of the surplus in the Plan (approximately \$205,861.04 as at December 31, 1995) plus investment earnings thereon to the date of payment, with adjustments for expenses associated with the wind up and surplus application.

**(c) The Executive Pension Plan of Patton's Place Limited, PN 407874**

Payment of surplus to Patton's Place Limited, from The Executive Pension Plan of Patton's Place Limited, Registration Number 407874, in the amount of 100% of the surplus in the plan (\$579,903.47 as at August 31, 1995), plus investment earnings thereon to the date of payment.

**(d) The Pension Plan for Salaried Employees of Wean Canada Ltd., PN 329938**

Payment of surplus to Anker-Holth Limited, from The Pension Plan for Salaried Employees of Wean Canada Ltd., Registration Number 329938, in the amount of 50% of the surplus in the Plan (approximately \$574,890.50 as at August 31, 1994) after deduction of all actuarial, Trustee and legal expenses incurred in connection with the wind up of the Plan and the surplus distribution, plus investment earnings thereon to date of payment.

**(e) Pension Plan for Employees of Control Data Systems Canada, Ltd., PN 314732**

Payment of surplus to Control Data Systems Canada Ltd., from the Pension Plan for Employees of Control Data Systems Canada, Ltd., Registration Number 314732, in the amount of surplus remaining

- (a) after the payment of all administration and other expenses incurred by the Applicant or the membership Committee in connection with the wind-up of the Plan and the distribution of surplus,
- (b) after benefit enhancements have been provided to certain Plan members and former members, and
- (c) after the distribution of 32% of the remaining surplus to the members of the Sharing Group,

all as set out in the Surplus Sharing Agreement (approximately \$14,552,584 or 68% of the remaining surplus as at August 31, 1995), plus investment earnings thereon and other adjustments to the date of payment.

**(f) The Pension Plan for Salaried Employees of ESSROC Canada Inc., PN 507566**

Payment of surplus to ESSROC Canada Inc., from The Pension Plan for Salaried Employees of ESSROC Canada Inc., PN 507566, in the amount of 50% of \$10,202,000 (the amount of surplus in the Plan as at August 31, 1995, the effective date of the wind-up) plus 50% of investment earnings thereon to the date of payment and minus 50% of (i) the legal fees and disbursements incurred by the Applicant and by the Advisory Committee and (ii) all other costs and expenses related to the continuing administration and wind-up of the Plan.

**(g) Retirement Plan for Salaried Employees of Dubois Chemicals of Canada Limited, PN 0442376**

Payment of surplus to Dubois Chemicals of Canada Limited and its Affiliates, from the Retirement Plan of Salaried Employees of Dubois Chemicals of Canada Limited and its Affiliates, Registration Number 442376, in the amount of 60% of the surplus in the Plan (approximately \$1,306,454 as at June 30, 1992) plus investment earnings thereon to the date of payment and adjusted to reflect investment earnings or losses and expenses.

**Surplus Withdrawal on Plan Wind Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909 (as amended by O. Reg. 743/91) and s. 78(1) and 79(3) of the Act - Partial Wind Up**

At the Commission meeting held May 30, 1996, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission denied consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Non-Unionized Employees (MacMillan Bathurst Inc.), PN 0981324 (C-102836)**

Not consent to the application in its present form and direct the Acting Chair to write a letter to the applicant, asking the applicant,

1. if it chooses to reapply, to clarify the nature of the application and specifically state what consent or order the applicant is requesting from the Pension Commission of Ontario;
2. and advising the applicant that, if it is making an application for surplus withdrawal, the requirements of the Act must be satisfied. The applicant should also refer to the relevant PCO policies.

At the Commission meeting held June 27, 1996, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:



**(a) Rohm and Haas Canada Inc. Retirement Plan, PN 0296673 (C-2014)**

Payment of surplus to Rohm and Haas Canada Inc., from the Rohm and Haas Canada Inc. Retirement Plan, PN 0296673, in the amount of 80% of the surplus in the Plan (approximately \$1,119,904 as at December 16, 1994), adjusted for investment earnings, actual expenses incurred in connection with the partial wind up and actual benefit payments made in respect of the partial wind up.

**Applications Under Section 8 of the Regulations, and subsection 78(1) of the PBA - Request for Consent of the Commission to Surplus Withdrawal on Plan Wind Up to be filed in Court**

At the Commission meeting held January 25, 1996, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Joy Manufacturing Company (Canada) Ltd. Salaried Employees' Retirement Income Program, PN 0267526 (C-7134)**

Payment of surplus to Beloit Canada Ltee/Ltd. from the Joy Manufacturing Company (Canada) Ltd. Salaried Employees' Retirement Income Program, PN 0267526 (formerly C-7134), in an amount (estimated to be \$7,807,197 as at July 31, 1995) which is 76.25% of \$6,971,241 as at December 2, 1988 plus 76.25% of investment earnings thereon to June 28, 1995 and minus 76.25% of all costs and expenses incurred up to June 28, 1995 in connection with the continuing administration and wind up of the Pension Plan (the "Surplus"), plus any investment earnings on the Surplus from June 28, 1995 to the date of payment and minus any costs and expenses incurred by Beloit Canada Ltee/Ltd. from June 28, 1995 to the date of payment subject to the following conditions:

- (a) that the Members' Share of surplus is segregated in accordance with section 2 of the Pension Plan Assets Settlement Agreement made as of the 28th day of July, 1995 between Beloit, Consenting Plan Members, Smith, Hunt, Buck and Montreal Trust Company of Canada (the "Agreement");
- (b) that there be filed with the Superintendent either,

- (i) a letter evidencing that Beloit, Roger Hunt and the Committee (as defined in the Agreement) have agreed that all Pension Plan fund assets for the period January 1, 1987 to December 31, 1995 have been properly accounted for, or
- (ii) a letter from a chartered accountant appointed by agreement of Beloit, Roger Hunt, and the Committee attesting that all Pension Plan fund assets for the period January 1, 1987 through December 31, 1995 have been properly accounted for;

- (c) that any adjustment contemplated by section 3(d) of the Agreement arising out of the letter from Mr. Coe to Mr. Bauslaugh dated January 16, 1996 has been properly identified and provided for to the satisfaction of the Superintendent; and
- (d) that if any adjustment is required to be made to the assets or liabilities identified in the wind up report previously filed and approved as a result of conditions (c) or (d) above, no payment shall be made from the Pension Plan fund to Beloit until the Superintendent approves such amendments to the wind up report as are required as a result of the adjustment.

Once the Commission is satisfied that these conditions are met, the Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulations.

At the Commission meeting held February 21, 1996, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Employees of Belcam Inc., PN 0395293**

Payment of surplus to Belcam Inc. from the Pension Plan for Employees of Belcam Inc., PN 0395293, in the amount of \$214,345 as at December 31, 1991, plus investment earnings thereon to the date of payment net of expenses.

At the Commission meeting held May 30, 1996, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Frye Carbon Products Ltd. Pension Plan (C-101916)**

Payment of surplus to Frye Carbon Products Ltd. from the Frye Carbon Products Ltd. Pension Plan, C-101916, in the amount of \$124,675 as at August 31, 1990 plus investment earnings thereon to the date of payment and other adjustments such as fees.

At the Commission meeting held June 27, 1996, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Salaried Employees of Barber-Colman of Canada Limited, PN 549998 (C-10605)**

Payment of surplus to Barber-Colman of Canada, Limited from the Pension Plan for Salaried Employees of Barber-Colman of Canada Limited, PN 549998 (C-10605), in the amount of \$210,874 as at October 31, 1989 plus adjustment for investment earnings and expenses thereon to the date of payment.

**(b) Pension Plan for Salaried Employees of Stanton Pipes Limited, PN 0312223**

Payment of surplus to British Steel plc from the Pension Plan for Salaried Employees of Stanton Pipes Limited, PN 312223, in the amount of \$323,636 as at November 30, 1985 plus investment earnings thereon to the date of payment less expenses properly payable out of the pension fund for the Plan (together estimated to be \$806,962 as at October 12, 1995), less further expenses properly payable out of the pension fund for the plan; provided that this consent shall not be effective until the applicant satisfies the Commission that all reasonable steps have been taken to locate missing H.M. Long and Coutts plan documents, including a Revenue Canada search and that there is nothing in any documents located as a result of the search that conflicts with the Commission's proposed decision.

At the Commission meeting held September 19, 1996, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) The Retirement Plan for Employees of Faxon Canada Limited, 951673**

Payment of surplus to Faxon Canada Limited from The Retirement Plan for Employees of Faxon Canada Limited, Registration Number 951673, in the amount of \$114,195.00 as at December 31, 1995 plus investment earnings thereon to the date of payment and other adjustments such as fees.

**Applications Approved under subsections 63(7) and (8) of the PBA - Return of Member Contributions**

At the Commission meeting held January 25, 1996, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) Pension Plan for Employees of ITCO Properties Ltd., PN 0583195 (C-14778)**

Refund of member required contributions from Pension Plan for Employees of ITCO Properties Ltd., PN 0583195, in the aggregate amount of \$51,800 as at October 31, 1994 plus credited interest to the date of payment.

**(b) Pension Plan For Salaried Employees of Semple-Gooder Roofing Limited, PN 0302240 (C-11476)**

Refund of member required contributions from Pension Plan For Salaried Employees of Semple-Gooder Roofing Limited, PN 0302240, in the amount of \$372,910 as at December 31, 1993, plus investment earnings thereon to the date of payment.

At the Commission meeting held January 25, 1996, the Commission considered the application pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) Pension Plan for Employees of Mintex - A Division of BBA Canada Limited, PN 0287326 (C-7313)**

The Pension Commission of Ontario directed the Chair to send a letter to MLH + A Inc. requesting an explanation of the apparent breaches of the Act and advising it that the Pension Commission of Ontario cannot retroactively give consent to a refund of member contributions.

At the Commission meeting held May 30, 1996, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) Pension Plan for Employees of G.N. Johnston Equipment Co. Limited (Ltee.), PN 0265090 (C-2167)**

Refund of member contributions from the Pension Plan for Employees of G.N. Johnston Equipment Co. Limited (Ltee.), PN 0265090 (C-2167), in the amount of \$397,400 as at January 1, 1994 plus credited interest to the date of payment.

At the Commission meeting held June 27, 1996, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) Pension Plan for the Employees of the College of Nurses of Ontario, PN 0233957**

Refund of member contributions from the Pension Plan for the Employees of the College of Nurses of Ontario, PN 0233957, in the amount of \$25,759.36 as at June 30, 1992 plus credited interest to the date of payment.

At the Commission meeting held July 25, 1996, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) Retirement Plan for Employees of Canada News-Wire Limited, PN 0404657**

Refund of member contributions from the Retirement Plan for Employees of Canada News-Wire Limited, PN 0404657, in the amount of \$82,176 as at December 31, 1995 plus interest earned by the pension fund to the date of payment.

**(b) Retirement Benefit Plan for the Employees of Black Photo Corporation, PN 0407254 (C-15843)**

Refund of member contributions from the Retirement Benefit Plan for the Employees of Black Photo Corporation, PN 0407254 (C-15843), in the amount of \$56,505 as at September 30, 1995 plus credited interest to the date of payment.

At the Commission meeting held September 19, 1996, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) The Retirement Benefit Plan of MB Services Corporation and McMillan Binch, PN 958892**

Refund of member contributions from The Retirement Plan of MB Services Corporation and McMillan Binch, Registration Number 958892, in the amount of \$27,798.47 as at April 1, 1996 plus credited interest to the date of payment.

**(b) Euclid-Hitachi Heavy Equipment Ltd., PN 996041**

Refund of member contributions from the Euclid-Hitachi Heavy Equipment Ltd. pension plan, PN 996041, in the amount of \$458,300 as at April 1, 1994 plus credited interest to the date of payment.

**(c) Retirement Plan for the Employees of Cablevue (Quinte) Limited, PN 386268**

Refund of member contributions from the Retirement Plan for the Employees of Cablevue (Quinte) Limited, Registration Number 386268, in an amount not exceeding \$80,574 as at August 31, 1994 plus credited interest to the date of payment.

**Applications Approved under section 105 and subsection 78(4) of the PBA - Extension of Time and Return of Overpayment**

At the Commission meeting held February 21, 1996, the Commission consented to an extension of time for filing an application and to the refund of an overpayment as follows:

**(a) Pension Plan for Salaried Employees of Western Publishing (Canada) Inc., PN 0560334 (C-11645)**

1. pursuant to section 105 of the Act, to extend the time limit specified under subsection 78(4) of the Act, for filing the application; and,
2. pursuant to subsection 78(4) of the Act, to a refund to the applicant from the Pension Plan for Salaried Employees of Western Publishing (Canada) Inc., PN 0560334 (formerly C-11645), of \$794.79 overpayment made in 1994, plus investment earnings thereon to the date of payment.

Although the application did not satisfy the notice requirement set out in Policy R350-101, in light of the small amount involved, the Commission exercised its discretion and consented to the refund of overpayment.



**(b) Retirement Plan for Employees of Pitman-Moore Animal Products Limited, PN 0999367 (C-103559)**

1. pursuant to section 105 of the Act, to extend the time limit specified under subsection 78(4) of the Act, for filing the application; and,
2. pursuant to subsection 78(4) of the Act, to a refund to the applicant from the Retirement Plan for Employees of Pitman-Moore Animal Products Limited, PN 0999367 (formerly C-103559), of a \$17,585 overpayment plus investment earnings thereon to the date of payment.

The Commission noted the background to the application as follows:

The Retirement Plan for the Employees of Pitman-Moore Animal Products Limited (the Plan) was wound up on December 31, 1990 leaving a surplus of \$127,153. At that time, according to the applicant, it was expected that the surplus would be substantially reduced or completely eliminated due to interest loss and deteriorating annuity purchase rates. Furthermore, the employer anticipated that a deficiency arising from an illiquid Hong Kong bank note was not expected to recover more than \$0.85 to \$0.95 per dollar invested. To make up this shortfall, an amount of \$17,585 was contributed to the fund in 1993 to compensate for individual members' anticipated transfer deficiencies. In May 1995, the Canada Deposit Insurance Corporation covered a portion of the loss on the Hong Kong note (\$0.07 per dollar). The employer would not have made the additional payment if it had reason to believe that the loss on the Hong Kong note was insured.

The Commission noted that although the application did not satisfy the notice requirement set out in Policy R350-101, in light of the background set out above the Commission exercised its discretion and consented to the refund of overpayment.

**(c) Hospitals of Ontario Pension Plan, PN 0346007**

In light of the representation in a letter dated January 22, 1996, from Ms. Kim Walcott Kelly of HOOPT that overpayments have been made, the Pension Commission of Ontario consent

1. pursuant to section 105 of the Act, to extend the time limit specified under subsection 78(4) of the Act, for filing the application to the applicant's 1995 fiscal year;

2. pursuant to subsection 78(4) of the Act, to a refund to the three participating employers under the Hospitals of Ontario Pension Plan, PN 0346007, of the overpayments they made in 1994, plus investment earnings thereon to the date of payment, as follows:

Portland District Community Health Centre,  
\$607.19  
CM Hinks Treatment Centre, \$956.49  
Canadian Institute for Health Information,  
\$268.04

At the Commission meeting held September 19, 1996, the Commission consented to an extension of time for filing an application and to the refund of an overpayment as follows:

**(a) Andrew Murray Motors Ltd. Executive Pension Plan, PN 0908558**

1. pursuant to section 105 of the Act, to extend the time limit specified under subsection 78(4) of the Act, for filing the application; and,
2. pursuant to subsection 78(4) of the Act, to a refund to the applicant from the Andrew Murray Motors Ltd. Executive Pension Plan, PN 0908558, of \$66,900 overpayment made in 1994, plus investment earnings thereon to the date of payment.

**Applications Approved under subsection 78(4) of the PBA - Return of Overpayment**

At the Commission meeting held April 25, 1996, the Commission consented pursuant to subsection 78(4) of the PBA to the refund of overpayments as follows:

**(a) Canada Tungsten Inc. Employees' Pension Plan, PN 0216994 (C-8056)**

Refund to the applicant from the Canada Tungsten Inc. Employees' Pension Plan, PN 0216994 (formerly C-8056), of \$43,250.47 overpayment made in 1995, plus investment earnings thereon to the date of payment.

At the Commission meeting held May 30, 1996, the Commission consented pursuant to subsection 78(4) of the PBA to the refund of overpayments as follows:

**(a) Pension Plan for Employees of Wm. H. McGee & Co. of Canada Ltd., PN 0328344 (C-3523)**

Refund to the applicant from the Pension Plan for Employees of Wm. H. McGee & Co. of Canada Ltd., PN 0328344 (formerly C-3523), of \$68,360 overpayment made in 1995, plus investment earnings thereon to the date of payment.

At the Commission meeting held June 27, 1996, the Commission consented pursuant to subsection 78(4) of the PBA to the refund of overpayments as follows:

**(a) Pension Plan for Employees of Canada Publishing Corporation, PN 0565945 (C-11928)**

Refund to the applicant from the Pension Plan for Employees of Canada Publishing Corporation, PN 0565945 (formerly C-11928), of \$13,218.58 overpayment made in 1992, plus investment earnings thereon to the date of payment.

**Pension Benefits Guarantee Fund ("PBGF")**

**Notice of Proposed Declarations**

On January 25, 1996, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

**(a) Non-Contributory Pension Plan for Hourly Paid Employees of Standard Modern Technologies Corporation, PN 0432328**

**(b) Canadian Building Systems Inc. Pension Plan for Members of United Steelworkers of America Local 6791, PN 0225888 (C-9344)**

On February 21, 1996, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

**(a) Pension Plan for Union Employees of Dorcan Valve Inc., PN 0407270 (C-15871)**

On May 30, 1996, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

**(a) Pension Plan for Employees of American Healthcare Mfg. (Canada) Ltd. who are Members of the Canadian Automobile, Aerospace & Agricultural Workers (CAW) and its Local 397, PN 0490326 (C-19292)**

On September 19, 1996, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

**(a) Retirement Plan for Employees of Elan Corporation, PN 0567024**

**Declaration that the PBGF Applies to Pension Plans**

On January 25, 1996, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies, pursuant to subsection 83(1) of the PBA, to the following pension plan:

**(a) Pension Plan For Designated Executive Employees of Libbey-St. Clair, PN 0692756 (C-103741)**

On April 25, 1996, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies, pursuant to subsection 83(1) of the PBA, to the following pension plan:

**(a) Non-Contributory Pension Plan for Hourly Paid Employees of Standard Modern Technologies Corporation, PN 0432328**

On May 30, 1996, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies, pursuant to subsection 83(1) of the PBA, to the following pension plan:

**(a) Pension Plan for Union Employees of Dorcan Valve Inc., PN 0407270 (C-15871)**

**(b) Canadian Building Systems Inc. Pension Plan for Members of United Steelworkers of America Local 6791, PN 0225888 (C-9344)**

On September 19, 1996, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies, pursuant to subsection 83(1) of the PBA, to the following pension plan:

**(a) Pension Plan for Employees of American Healthcare Mfg. (Canada) Ltd. who are Members of the Canadian Automobile, Aerospace & Agricultural Workers (CAW) and its Local 397, PN 0490326**

**Allocations, subsection 34(7) of Regulation 909 under the PBA**

On January 25, 1996, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**(a) Pension Plan For Designated Executive Employees of Libbey-St. Clair, PN 0692756 (C-103741)**

Allocate and pay an amount not to exceed \$87,031 to provide, together with the Ontario assets of the Plan, for the benefits determined under section 34 of the Regulation.

**(b) The Welles Corporation Limited C.A.W. Pension Plan, C-100807**

Allocate and pay an amount not to exceed \$615,000 to provide, together with the Ontario assets of the Plan, for the benefits determined under section 34 of the Regulation.

On February 21, 1996, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**(a) MacLeod-Stedman Incorporated Retirement Pension Plan, C-7623 registered in Manitoba**

Allocate and pay an amount not to exceed \$268,369.99 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation.

On April 25, 1996, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**(a) Non-Contributory Pension Plan for Hourly Paid Employees of Standard Modern Technologies Corporation, PN 0432328**

Allocate and pay (i) a one time payment of \$195,953 in respect of pensions provided under the Pension Plan for the period from October 26, 1987 to December 31, 1995, and (ii) monthly payments of \$1,830 from January 1, 1996.

**(b) Retirement Pension Plan for Unionized Employees of Storwal International Inc., PN 0577957**

Allocate and pay an amount not to exceed \$2,459,342 to provide for (together with the Ontario assets of the Plan) the benefits determined under section 34 of the Regulation.

On May 30, 1996, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**(a) Canadian Building Systems Inc. Pension Plan for Members of United Steelworkers of America Local 6791, PN 0225888 (C-9344)**

Allocate and pay an amount not to exceed \$771,000 to provide, (together with the Ontario assets of the Plan) the benefits determined in accordance with section 34 of the Regulation.

**(b) Retirement Income Plan for Salaried Employees of Savage Shoes Limited and Associated Companies, PN 0440420 (C-18831)**

Allocate and pay an amount not to exceed \$877,381 to provide, (together with the Ontario assets of the Plan) the benefits determined in accordance with section 34 of the Regulation.

On September 19, 1996, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**(a) Pension Plan for Employees of American Healthcare Mfg. (Canad) Ltd. Who are Members of the Canadian Automobile, Aerospace & Agricultural Workers (CAW) and its Local 397, PN 0490326**

Allocate and pay an amount not to exceed \$370,000 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation.

**(b) Pension Plan for Union Employees of Dorcan Valve Inc., PN 0407270**

Allocate and pay an amount not to exceed \$30,000 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation.

**(c) The Pension Plan of Union Drawn Steel Company Limited, PN 0312116**

Allocate and pay an amount not to exceed \$2,739,600 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation.



INDEX NO.	XDEC-30
TITLE	Imperial Oil Limited Retirement Plan (1988), PN 0347054, (C-8884), and Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., PN 0344002, (C-4280), PBA 1990, c. 14(1)(c), s. 22
DATE OF DECISION	August 3, 1995
PUBLISHED BBS PUBLISHED	November 27, 1995 Bulletin 6/4 (Fall - Winter 1997)

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c.P. 8;

## Reasons for Decision

**AND IN THE MATTER OF** the Decisions of the Superintendent of Pensions dated May 7, 1993 and June 29, 1994 in respect of the Imperial Oil Limited Retirement Plan (1988), Registration Number 0347054 (the "IOL Plan") and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration Number 0344002 (the "MFI Plan") (collectively the "Plans");

**AND IN THE MATTER OF** a request for a Hearing before the Pension Commission of Ontario in accordance with subsection 89(8) of the Act regarding an amendment to section 4.3 of the Plans;

Between:

CERTAIN MEMBERS AND FORMER MEMBERS OF THE PLANS REPRESENTED BY KOSKIE & MINSKY (THE "ENTITLEMENT 55 GROUP") - and -

THE SUPERINTENDENT OF PENSIONS - and -

IMPERIAL OIL LIMITED

**Before:** Eileen E. Gillese, Chair, Darcie Beggs, member, Joyce Stephenson, member

**Appearances:** For the applicant:  
Mr. Mark Zigler, Mr. Kevin MacNeil

For the Superintendent:  
Mr. Shaun Devlin, Ms. Peggy McCallum

For Imperial Oil:  
Mr. J. Brett Ledger, Mr. Ian J. McSweeney

**Hearing Dates:** May 23 & 24, 1995, July 20, 1995  
Toronto, Ontario

## Nature of the Application

The Superintendent of Pensions for Ontario (the "Superintendent") registered amendments to the Imperial Oil Limited Retirement Plan (1988) and the Pension Plan for Former Employees of McColl-Frontenac Inc. A group of former employees (the "Entitlement 55 Group") objected to the registration of the amendments on the basis that the amendments were void. They sought a hearing before the Pension Commission of Ontario (the "Commission") in respect of the registration of the Amendments by the Superintendent. Specifically, they sought a ruling that the amendments were void and they sought various orders that would have the effect of compelling Imperial Oil Limited ("Imperial Oil") to administer the Plans according to the terms of the Plans in place before the amendments were passed.

A preliminary objection was taken to the jurisdiction of the Commission to hear the matter. In a decision rendered on April 28, 1995, the Commission took jurisdiction and gave its reasons. Subsequently, the Commission heard evidence and argument on the main matter. The following are its reasons for decision on the merits.

## The Facts

In September of 1991, Imperial Oil filed with the Superintendent proposed amendments to section 4.3 of the Plans, which were to be effective as of August 1, 1991 (the "Amendments"). After requiring Imperial Oil to follow the process set out for adverse amendments under the Act, the Superintendent registered the amendments.

Section 4.3 of the Plans, after the Amendments, reads as follows:

A Member with ten (10) or more years of Service whose employment is terminated by the Company and who is eligible for a termination annuity under section 4.1. *and who will be eligible to retire under section 2.2 within five (5) years of the date of terminating employment*, may retire under section 2.2(a) and receive a pension calculated under section 3A.2 in lieu of a termination annuity under section 4.1 if the Member's employment is terminated for reasons deemed by the Company to be for maintaining or improving the efficiency of its operations; provided, however, that the date of retirement for the purpose of receiving payment of such pension shall not be effective until the last day of the month in which the Member attains age 55 and further provided that the estimate of the Member's Canada/Quebec Pension Plan retirement benefit and the amount of pension currently being paid under the Old Age Security Act as referred to in sections 3A.1 (a) and (b) shall be as of the month of such Member's termination. (emphasis added)

The Amendments resulted in the addition of the words in italics to section 4.3 of the Plans.

Prior to the Amendments, on a strict reading of section 4.3, a plan member who had ten or more years of service at the time Imperial Oil terminated his/her employment for efficiency reasons, would have been entitled to an enhanced early retirement annuity. The effect of the Amendments was to deny such employees the enhanced benefits unless the employee would have been able to retire within five years of termination, that is, unless the employee was aged 50 or older at the time he/she was terminated by the company for efficiency reasons.

Until 1988, section 4.3 was a discretionary provision. In 1988, section 4.3 was amended to remove Imperial Oil's discretion. Between 1988 and the passage of the Amendments, section 4.3 benefits were granted only to employees who had attained 50 at the time they were terminated for efficiency reasons. Before 1988, 5 employees under the age of 50 who were terminated for efficiency reasons received section 4.3 benefits.

In October of 1990, Imperial Oil offered its employees a voluntary termination package. In August of 1991, as has been noted, the Amendments were passed. In February of 1992, or shortly thereafter, Imperial Oil terminated a large number of employees for efficiency reasons. A number of those terminated employees had 10 years or more of service but, as they had not reached age 50 at the time of termination, they were denied section 4.3 benefits.

Imperial Oil was the administrator of the Plans at all relevant times, including August of 1991 when the Amendments were passed. At the time the Amendments were passed, Imperial Oil was considering "outsourcing" some operations which would have led to some terminations. The evidence was conflicting on what, if any, other involuntary terminations were under consideration by Imperial Oil at that time.

Imperial Oil had a power of amendment under the Plans, specifically, under section 11.1 of the IOL Plan and under Article XII.1 of the MFI plan.

Imperial Oil maintained that the Amendments were passed to clarify its practice of only providing section 4.3 benefits to employees aged 50 and older who were terminated for efficiency reasons. The Entitlement 55 Group argued that Imperial Oil passed the Amendments with the knowledge that it intended to reduce the workforce and that the Amendments would affect those employees that lost their jobs and who had 10 years service at the time of termination.

#### The Issues

The essence of this dispute lies in the conflict between the employer's right to amend a pension plan and the employees' expectation that, having met the 10 year service requirement, they could count on section 4.3 benefits if they were terminated for efficiency reasons.

In legal terms, the question is whether the Amendments are void and of no effect. At the hearing, a number of issues were abandoned by the Entitlement 55 Group leaving only the following to be decided.

1. Are the Amendments void pursuant to clause 14(1)(c) of the *Pension Benefits Act* (the "Act")
2. Did Imperial Oil contravene subsection 22(4) of the Act by virtue of passing the Amendments?
3. If the answer to either issue #1 or #2 is "yes", what orders should the Commission make?

#### The Relevant Legislation

Frequent reference is made to sections 14 and 22 in the balance of our reasons. For ease of reference, the relevant portions of those sections are set now.

#### Section 14 - Reduction of Benefits

- 14.– (1) An amendment to a pension plan is void if the amendment purports to reduce,
- (a) the amount or the commuted value of a pension benefit accrued under the pension plan with respect to employment before the effective date of the amendment;

- (b) the amount or the commuted value of a pension or a deferred pension accrued under the pension plan; or
- (c) the amount or the commuted value of an ancillary benefit for which a member or former member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit.

## Section 22 - Registration and Administration

- 22.– (1) The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.
- (2) The administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of the administrator's profession, business or calling, ought to possess.
- ...
- (4) An administrator or, if the administrator is a pension committee or a board of trustees, a member of the committee or board that is the administrator of a pension plan shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the pension fund.

## Clause 14(1)(c)

The intent of section 14 appears clear; it is to balance the right of employers to amend pension plans against the need to protect employee benefits. The mechanism used to achieve this balance in clause 14(1)(a) and (b) is the concept of accrued rights. Thus, clause 14(1)(a) precludes amendments which purport to reduce the amount (or commuted value) of accrued pension benefits and clause 14(1)(b) precludes amendments which purport to reduce the amount (or commuted value) of a pension or deferred pension.

The parties were agreed on many aspects of the operation of clause 14(1)(c). They agreed that it would operate to void an amendment which purported to reduce the amount of an ancillary benefit for which a member or former member had met all eligibility requirements. They agreed that while there is no definition of ancillary benefits in the Act,

subsection 40(1) sets out a list of ancillary benefits which includes early retirement benefits in excess of the minimums in section 41. The parties were agreed, as well, that section 4.3 of the Plans concerns ancillary benefits and that the 10 year service requirement was an eligibility requirement within the meaning of clause 14(1)(c).

The point of departure over the operation of clause 14(1)(c) is whether termination by the company for efficiency reasons was an eligibility requirement. The Entitlement 55 Group argued that eligibility and entitlement are two different things and that termination by the company was not an eligibility requirement but rather a contingent event. In other words, eligibility requirements were said to be the conditions an employee must meet in order for entitlement to occur if the contingent event ever occurs. Eligibility requirements, therefore, do not include the occurrence of the contingent event itself. So, it was argued, whereas the 10 year service requirement in section 4.3 was an eligibility requirement, termination by the company for efficiency reasons was a contingent event related to entitlement, not eligibility. A number of arguments were made to support the distinction between eligibility requirements and contingencies including the fact that service is within the employee's control but termination is not.

Imperial Oil, on the other hand, argued that all requirements that had to be met in order for an employee to receive the benefit were eligibility requirements. Thus, termination by the company for efficiency reasons was an eligibility requirement and, as the employees had not been terminated by Imperial Oil at the time the Amendments were passed, they had not met all of the eligibility requirements necessary to receive section 4.3 benefits and clause 14(1)(c) did not operate to bar the Amendments.

A plain reading of clause 14(1)(c) leads us to conclude that termination for efficiency reasons is an eligibility requirement. The key words in the Clause are "all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit". In our view, both the 10 year service requirement and termination by the company for efficiency reasons were necessary in order for an employee to "exercise the right to receive payment" and thus both are eligibility requirements. We recognize that the word "eligibility" is not defined in the definition section of the Act, however, it appears to be defined in the Clause itself as any requirement "necessary to exercise the right to receive payment".

We do not accept the characterization that there is a difference between "eligibility requirements" and "contingent events" for the purposes of the Clause. Both mean an event that must occur in order for a member to be eligible to receive a benefit and the Clause defines such an event as an eligibility requirement.



Had this interpretation of the Clause rendered it meaningless, we would have had to go further. However, it does not leave the Clause devoid of meaning. For example, some unreduced early retirement benefits become available at the member's option once the member has reached certain age and service requirements. The member may elect not to exercise his or her rights but continue to work. All eligibility requirements having been met, because of the Clause an employer could not amend the plan so as to take away that employee's right to take early retirement with an unreduced pension. The difference between this type of provision and that in section 4.3 is that the event triggering payment is the election by the member to retire early. The decision to retire early is not an eligibility requirement but a decision to act upon a right.

As, in our view, the words in the Clause are unambiguous, clear and in harmony with the apparent intent of the section, there is no need to go further and adopt a purposive approach to interpretation.

#### Subsection 22(4)

The Entitlement 55 Group argument in relation to subsection 22(4) was stated in the following terms.

"Whether Imperial was faced with a conflict of interest as between its role as employer and its role as administrator; and

Whether Imperial acted on the conflict of interest, in its capacity as administrator of the Plans, and to the detriment of the interests of the beneficiaries of the Plans."

In the view of the Entitlement 55 Group, in amending section 4.3, Imperial Oil was acting in both its capacity as employer and its capacity as administrator of the Plans, simultaneously. It recognised that Imperial Oil, as employer, had the authority to amend the pension plan as part of the employment contracts of its employees. However, it maintained that the amendment powers were subject to the fiduciary obligations imposed or created by subsection 22(1) of the Act. Subsection 22(1), it was argued, imposed fiduciary obligations that were not limited to matters of fund investments but also involved plan amendments which would utilize fund assets or reduce fund liabilities "for improper purposes". The alleged improper purpose was that the Amendments reduced the potential liabilities of the pension fund in respect of individuals who would otherwise qualify.

At the same time, it was argued, Imperial Oil placed itself in a conflict of interest situation which is prohibited by subsection 22(4); in its role as employer, it wished to reduce the pension fund liabilities but in its role as administrator it had a duty to protect the interests of the beneficiaries of the fund who had reached the 10 year service qualification and "qualified" for the section 4.3 benefits.

We do not accept that Imperial Oil was acting in its capacity as administrator when it passed the Amendments and therefore we do not accept that section 22 applied to its actions. The words "employer" and "administrator" are used throughout the Act. However, they are not used interchangeably. Rather, they are used to describe the two different functions that an employer may serve in respect of a pension plan.

The Act recognizes that an employer may wear "two hats" in respect of pension plans. Indeed, section 8 specifically states that an employer may be an administrator. In that way, it acknowledges that an employer may play two roles and it is self evident that the two roles may come into conflict from time to time.

To illustrate how the Act uses the words "administrator" and "employer" differently throughout the Act, consider sections 78 and 79 of the Act. Those provisions enable an employer to seek and receive surplus pension funds. Clearly, an administrator would be in a conflict of interest position if it sought the return of surplus funds for an employer. The Act makes it clear that it is the employer who seeks the refund of surplus funds under subsections 78 and 79. In section 19, on the other hand, it is the administrator who is charged with the obligation to ensure that "the pension plan and the pension fund are administered in accordance with this Act and the regulations". There are many, many other instances where the Act shows that the legislature chose between the word "administrator" and "employer". This leads us to the conclusion that, at least in the first instance, when the word "administrator" is used in section 22, it is used to mean the person or body administering the fund and who stands in a special fiduciary relationship with the plan members courtesy of the fiduciary standard of care set out in subsection 22(1).

Is there anything in the provisions of section 22 which would lead us to a contrary view, that is, to the view that the word "administrator" is used in section 22 simply as a shorthand to cover all those persons and bodies that section 8 permit to act as administrator? Not in our view. The section is aimed at setting out the standards, powers and duties, of those who wear the mantle of administrator.

We are of the view that an employer plays a role in respect of the pension plan that is distinct from its role as administrator. Its role as employer permits it to make the decision to create a pension plan, to amend it and to wind it up. Once the plan and fund are in place, it becomes an administrator for the purposes of management of the fund and administration of the plan. If we were to hold that an employer was an administrator for all purposes once a plan was established, of what use would a power of amendment be? An employer could never use the power to amend the plan in a way that was to its benefit, as opposed to the benefit of the employees. Section 14 presupposes this power is with an employer as it created parameters round the exercise of a power of amendment.

The exercise of the power of amendment was an act of Imperial Oil as employer. It breached neither subsection 22(1) nor subsection 22(4) as neither subsection applied to the act of amendment.

Another way of looking at the matter would be to see that the power of amendment contained in the Plans is an express agreement that for the purpose of making amendments, Imperial Oil would be acting in its capacity as employer. Even if Imperial Oil could be seen to be the administrator when passing the Amendments, we do not accept that it infringed the rule against conflicts of interest in subsection 22(4). Subsection 22(4) prohibits conflicts "in respect of the

pension fund". Throughout the Act, a distinction is drawn between "administration of the plan" and "investment of the fund". Subsection 22(2), for example, refers to both administration of the plan and investment of the fund. Subsection 22(4) uses only the words "in respect of the pension fund". In so doing, it is clear that the prohibition was in respect of matters directly affecting the fund. The Amendments would admittedly have an impact on the fund. However, they were primarily about the administration of the plan and were therefore not governed by the terms of subsection 22(4).

## ORDERS

In light of our rulings that the amendments violated neither section 14 nor section 22, there is no need to consider what orders ought to be made.

## CONCLUSION

The application is dismissed.

Dated this 3rd day of August, 1995 at the City of Toronto, Province of Ontario.

Eileen E. Gillese, Chair, Darcie Beggs, member, Joyce Stephenson, member



INDEX NO.

XDEC-31

PLAN

Pension Plan for Hourly Employees of ESSROC Canada Inc.  
PN 0544973 (C-10860), PBA 1990, ss. 78(1), O. Reg. 909, c. 8(1)(b)

DATE OF DECISION

September 21, 1995

PUBLISHED BBS  
PUBLISHED

November 27, 1995  
Bulletin 6/4 (Fall - Winter 1997)

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P8;

**AND IN THE MATTER OF** an application by ESSROC Canada Inc. to the Pension Commission of Ontario pursuant to subsection 78(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P8 and paragraph 8(1)(b) of R.R.O. 1990, Regulation 909 as amended, for a payment of surplus from the Pension Plan for Hourly Employees of ESSROC Canada Inc, PN 0544973 (C-10860);

**Before:** Eileen E. Gillese, Chair  
Monica J. Townson, Vice Chair  
Darcie L. Beggs, Member,  
Donald G. Collins, Member  
C.S. (Kit) Moore, Member,  
Al Seymour, Member  
Joyce A. Stephenson, Member

**Representation:** For the applicant: Alexander D. Muto,  
John M. Solursh

For the union: Michael Mazzuca,  
Raymond Gayton, Robert L. Quaiff

**Hearing Date:** July 27, 1995

**Decision Released:** September 21, 1995

#### **Reasons for Decision**

##### Nature of the Application

The Applicant, ESSROC Canada Inc., applied to the Pension Commission of Ontario (the "Commission") for consent to payment to it of 50% of the surplus funds in the Pension Plan for Hourly Employees of ESSROC Canada Inc., Registration Number 0544973 (C-10860) [the "Plan"] less 50% of legal fees and disbursements and other costs and expenses. The remaining surplus was to be distributed to members, former members and other persons entitled to benefits as of the effective date of wind-up, in the form of enhanced benefits.

The Cement, Lime, Gypsum and Allied Workers Division, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local D387 (the "Union") was the collective bargaining agent representing active Plan members. The Union supported the application.

The application, complete with proper notice documentation, was received by the Commission on April 26, 1995. The matter was scheduled to be heard by the Commission on July 27, 1995. On July 23, 1995, the Commission received a written request from a group consisting of 28 active Plan members and one retiree, asking that the Commission defer hearing the application until a full meeting of the union membership could be called and a decision taken as to whether legal counsel should be retained. The basis for seeking the adjournment was that neither the active members nor the retirees understood that they were potentially entitled to 100% of the surplus on plan wind up. As well, the dissident group questioned the right of a Union subcommittee to select and retain counsel without ratification by the general membership.

On July 27, 1995, the Commission considered the adjournment request. It was opposed by counsel for the Applicant and the Union; Union officials in attendance also voiced their opposition to the requested adjournment.

The Commission denied the adjournment request and heard the application. The surplus application was granted. The Commission promised to provide written reasons for refusing to grant the adjournment. These are the promised reasons.

##### The Facts Relevant to the Adjournment Request

In 1993, the Union agreed to the wind up of the Plan as part of broader collective bargaining negotiations between it and the Applicant. As well, the Union and the Applicant entered into an agreement to use surplus pension funds to provide certain enhanced benefits and to split any remaining surplus on a 50/50 basis (the "surplus sharing agreement"). The Union had legal counsel that advised them throughout





negotiations and with respect to the surplus sharing agreement. Full disclosure of the Plan documentation was made, from the outset, to the Union and its counsel.

At a meeting in February of 1994, the Union apprised the members of the terms of the surplus sharing agreement. The surplus sharing agreement was endorsed by 93% of all active members.

The Applicant obtained the consent of 95% of all former members of the Plan to the surplus sharing agreement. The consent forms signed by the former members stated that they had obtained, or had the opportunity to obtain, independent legal advice.

#### The Legislative Requirements for Consent

Paragraph 8(1)(b) of Ontario Regulation 909, as amended, to the *Pension Benefits Act*, R.S.O. 1990, c. P.8, precludes payment out of surplus to an employer unless certain consent requirements have been met.

8.– (1) No payment may be made from surplus out of a pension plan that is being wound up in whole or in part unless,

...

(b) the payment is to be made to an employer with the written agreement of,

(i) the employer,

(ii) the collective bargaining agent of the members of the plan or, if there is no collective bargaining agent, at least two-thirds of the members of the plan, and

(iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind up as the Commission considers appropriate in the circumstances.

#### The Issue

On a plain reading of paragraph 8(1)(b) of the Regulation, it is the agreement of the collective bargaining agent — and not that of the individual active members — that is needed for purposes of surplus sharing arrangements. In this case, the collective bargaining agent had agreed to the surplus sharing agreement and opposed the adjournment request. It was clear that the application met the consent requirements of the Act and Regulations. The issue for the Commission was whether, in such circumstances, it should accede to an adjournment request by the dissident group.

#### The Conclusion

It is well established in law that a trade union has exclusive authority to bargain on behalf of the members of the bargaining unit. A pension agreement negotiated at the same time as the collective bargaining agreement may be considered a collective agreement for purposes of labour law. A Union must be able to bind entire membership so it can speak with one voice. This view is reflected in the requirements of paragraph 8(1)(b)(ii), itself.

In light of the intention found on the face of the Regulation, the Commission ruled against the adjournment request. To have acceded to it would have been to involve the Commission in the internal affairs of the Union, a role that it is not given in the legislation and that it is not suited to undertake. If there are aggrieved members who feel that their interests have not been properly represented by the Union or who have some other complaint against the Union, they have avenues of redress through traditional labour law processes. Active members are bound by the Union's agreement and cannot come and speak in opposition to the Union.

Had there been some apparent breach of the fiduciary duty owed by a union to its members, the Commission might have relied on the fact that it controls its own processes to further consider the request. However, there was no suggestion of that. In fact, the oral evidence provided to the Commission by current and past Union officials, was to the contrary. Greater than 90% of active members voted in favour at a meeting where a full explanation of the surplus sharing agreement had been given.

Prejudice is, of course, always a relevant concern in a request for an adjournment. In this case, the surplus sharing agreement signed in December 1993 was part of a larger collective bargaining agreement which provided early retirement options for members, a fair number of whom took early retirement and were to get enhanced pensions from the surplus. Those people who had agreed to the pension surplus split 8 to 12 months earlier would have been prejudiced by further delay in receipt of benefits and enhancements.

Apart from these other considerations, the central and deciding factor against the granting of an adjournment was that it is not the role of the Commission to enter into disputes between a collective bargaining unit and its members in the context of paragraph 8(1)(b). Thus, the Commission dismissed the adjournment request.

Dated this 21st day of September, 1995, at the City of Toronto, Ontario.

Eileen E. Gillese, Chair, Monica J. Townson, Vice Chair, Darcie L. Beggs, member, Donald G. Collins, member, C.S. (Kit) Moore, member, Al Seymour, member, Joyce A. Stephenson, member

INDEX NO.	XDEC-32
PLAN	Ferro Canadian Employees' Pension Plan, PN 0246371, (formerly C-1248) PBA, 1990 s. 78(1), 79(3), O. Reg. c. 8(1)(b)
DATE OF DECISION	December 19, 1995
PUBLISHED BBS PUBLISHED	November 27, 1995 Bulletin 6/4 (Fall - Winter 1997)

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8; (hereinafter referred to as the "Act");

**AND IN THE MATTER OF** an application by Ferro Industrial Products Limited to the Pension Commission of Ontario pursuant to subsection 78(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 and paragraph 8(1)(b) of R.R.O. 1990, Regulation 909 as amended, for a payment of surplus from the Ferro Canadian Employees' Pension Plan, Registration Number 0246371 (formerly C-1248);

**Before:** Eileen E. Gillese, Chair,  
Monica J. Townson, Vice Chair,  
Darcie L. Beggs, Member,  
C.S. (Kit) Moore, Member,  
Joyce A. Stephenson, Member

**Representation:** For the applicant:  
Mr. Harry Freedman,  
Mr. Jeremy Forge

**For the respondent:** Mr. Mark Zigler,  
Mr. Roberto Tomassini

**Hearing Dates:** November 8 and 22, 1995

**Decision Released:** December 19, 1995  
Toronto, Ontario

#### Reasons for Decision

#### Nature of the Application

Ferro Industrial Products Limited ("Ferro") applied to the Pension Commission of Ontario (the "Commission") asking that the Commission consent to a payment of surplus to it (Ferro) in the amount of \$2,104,134 as at December 31, 1992 plus investment earnings thereon to the date of payment. The application was brought pursuant to subsections 78(1)

and 79(3) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 and section 8(1)(b) of Regulation 909, R.R.O. 1990, as amended (the "Regulations").

The application was made pursuant to a surplus sharing agreement whereby approximately 25 per cent of the surplus (\$695,604) as of the effective date of the wind up would be distributed to the members, former members and other persons entitled to benefits as of the effective date of the wind up and partial wind up.

The application was opposed by a group of 21 former employees of Ferro who were not included in the surplus sharing consent group. This group is referred to throughout as the "dissenting employee group".

#### The Facts

Pursuant to By-Law No. 7, Ferro established a superannuation plan for its employees sometime before 1945. To meet its obligations under the plan, it purchased individual life annuity contracts which it held for plan participants. While By-law No. 7 could not be located, it apparently gave Ferro the right to amend and revoke the by-law.

Effective June 1, 1945, pursuant to By-Law No. 12, Ferro established a trust to secure the pension plan assets (the "1945 Trust Agreement"). The trust held the previously purchased individual life annuity contracts and, in addition, each year the trustees purchased additional individual annuity contracts for every participant.

In 1961, By-law No. 17 was passed which purported to terminate and revoke the 1945 trust. As well, a terminating agreement (the "Terminating Agreement") was executed. All assets held in the 1945 trust were transferred to Manufacturers Life Insurance Company to be invested under a group annuity contract numbered GP 2715.

Effective January 1, 1974, through means of a new group contract GD 5226, Ferro adopted a new pension plan to provide benefits in respect of service after that date. Members of the plan covered by GP 2715 were given the option of transferring benefits accrued under GP 2715 to the new contract GD 5226 or of retaining a paid-up deferred annuity under GP 2715. Section 22 of GD 5226 provided Ferro with the power to direct where surplus funds were to be paid on termination of the policy.

The plan was restated effective November 1, 1984. An express right to the refund of surplus to Ferro was set out in the 1984 plan text; this term remained in the plan documentation until the plan was terminated. The plan was partially wound up December 31, 1991 and fully wound up effective December 31, 1992.

Under the terms of the surplus sharing agreement, approximately 25% of the surplus as of the effective date of the wind up would be distributed to the members, former members and other persons entitled to benefits as of the effective date of the wind up and partial wind up. The agreement provided that \$105,942 attributable to credited service prior to 1974 (prior plan) was to be divided among members and former members who had entitlements under the prior plan and \$589,662 of the remaining surplus assets was to be divided among those members and former members who made contributions to the plan in proportion to their contributions with a minimum share of \$1,200 payable to each individual. As well, the non-contributory (designated) members were to receive a minimum payout of \$1,200 each.

Fifty-six (56) of a total of 82 active members — or 68 per cent of the active plan members — provided written consents to the surplus sharing agreement. As will be seen below, the question of who comprised the group described in s. 8(1)(b)(iii) of the Regulations as “former members and other persons who are entitled to payments under the pension plan on the date of the wind up” was in issue. Ferro treated only those who were in receipt of payments from the fund at the time of wind up as being included in the consent group. This consisted of four former members who were not annuitized but, rather, were deferred vested members who had elected to remain in the plan. Two of the four (or 50 percent) consented. The dissenting employee group included the two people who did not consent; the balance were annuitants. With the exception of the two deferred vested members who did not consent, Ferro excluded the members of the dissenting employee group from the consent group and thus from sharing in the surplus.

### The Issues

In order for Ferro to succeed in its application, it had to satisfy the requirements in subs. 8(1)(b) of the Regulations

and those contained in subs. 79(3) of the Act. Three issues arose in determining whether it met those requirements.

The first issue relates to s. 8(1)(b) of the Regulations which is set out now for ease of reference.

- 8.— (1) No payment may be made from surplus out of a pension plan that is being wound up in whole or in part unless, ...
- (b) the payment is to be made to an employer with the written agreement of,
    - (i) the employer,
    - (ii) the collective bargaining agent of the members of the plan or, if there is no collective bargaining agent, at least two-thirds of the members of the plan, and
    - (iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind up as the Commission considers appropriate in the circumstances.

As can be seen, section 8(1)(b) establishes that where an employer seeks surplus from a pension plan pursuant to a negotiated surplus sharing agreement, it must have the written agreement of two-thirds of the active plan members (where there is no collective bargaining agent) and it must have the written agreement of an “appropriate” number of former members and others entitled to payments from the plan on the date of wind up. The Commission is expressly empowered to decide what is an appropriate number.

Ferro had the consent of 68% of active plan members and so met the requirement in subs. 8(1)(b)(ii) of the Regulations. At issue was whether it had met the requirement in 8(1)(b)(iii); that is, whether it had the agreement of “such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind up as the Commission considers appropriate in the circumstances”.

If the Commission found that Ferro met the requirements in s. 8(1)(b)(iii), it had to consider whether Ferro met the requirements of clause 79(3)(b) which requires an employer to demonstrate that the plan provides for surplus to be paid to it on plan wind up.

A third issue raised by the dissenting employee group was whether the Commission ought to reject the application on the basis that the surplus allocation formula used was unfair or improper. It was argued, among other things, that the Commission’s inherent supervisory powers and/or clause 79(3)(d) of the Act empowered the Commission to make such a determination.



Clauses 79(3)(b) and (d) are critical to the determination of this application so are set out now.

- (3) The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless, ...
- (b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan; ...
- (d) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus money out of a pension fund.

#### **Issue #1      Section 8(1)(b)(iii) of the Regulations**

In order to determine whether Ferro satisfied the requirements of s. 8(1)(b)(iii), we must first determine who is included in the group as described. It will be recalled that the specific wording of s. 8(1)(b)(iii) is:

- (iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind up as the Commission considers appropriate in the circumstances.

The question is: who falls within the group described as “former members and other persons who are entitled to payments under the pension plan on the date of the wind up”. The group thus described in s. 8(1)(b)(iii) will be referred to as the “former employee consent group”. Specifically, we must determine whether the former employee consent group includes persons whose benefits under the plan have been annuitized in the ordinary course prior to the wind up of the plan (“annuitants”). In making this determination, we must be mindful of the fact that annuitization was permitted both under the Act and the plan documentation itself.

It was confirmed that no one in the dissenting employee group (with the exception of the 2 deferred vested members) was entitled to any direct payments from the plan at the date of wind up. It was argued, however, that the members of the dissenting employee group ought to be covered as they received annuity payments and the annuities had been purchased pursuant to the pension plan.

It has been the policy of the Commission that annuitants are not included in the former member consent group unless they were annuitized shortly before the date of wind up. With the possible exception of Mr. Shand, dealt with below, no annuitizations occurred near the date of wind up. Rather, annuitization occurred in the same way it had throughout the plan’s history and without acceleration. The policy of not including annuitants in the former member consent

group has been followed by the Commission in many cases. Like any policy, however, it must be re-examined in the context of an individual case to see whether it ought to be applied.

On reading s. 8(1)(b)(iii), it is unclear whether the phrase “who are entitled to payments under the pension plan on the date of the wind up” is meant to apply to “former members” as well as “other persons”. If the phrase is meant to apply, it would seem to exclude annuitants as once they are annuitized they are no longer entitled to payments “under the pension plan”. The plan’s obligations are discharged through the purchase of an annuity with the result that an annuitant is entitled to payment not from the plan but from the insurance company which provides the annuity contract.

If the words “former member” are not modified by the phrase, we must consider the definition of “former member” contained in section 1 of the Act.

“Former member” means a person who has terminated employment or membership in a pension plan, and,

- (a) is entitled to a deferred pension payable from the pension fund,
- (b) is in receipt of a pension payable from the pension fund,
- (c) is entitled to commence receiving payment of pension benefits from the pension fund within one year after termination of employment or membership, or
- (d) is entitled to receive any other payment from the pension fund.

Neither (a) nor (c) can possibly apply to the annuitants. Item (b) does not apply for the reason given in the preceding paragraph, namely, the pension becomes payable from the insurance company not the fund. Item (d) could apply if plan members are found to own surplus, on the basis that the right to receive some share of surplus is encompassed by the words “entitled to receive any other payment from the pension fund”. We resolve the question of surplus ownership under the heading Issue #2, below, in favour of Ferro with the result that (d) does not apply to the dissenting employee group.

Reference to s. 10 of the Regulations assists in determining whether annuitants are meant to be included in the former member consent group. Section 10 is not directly on point as it deals with distribution of surplus from an on-going plan; however, in establishing the consent requirements for surplus applications in respect of on-going plans, subs. 10(3) specifically requires the consent of annuitants except those who requested the plan administrator to annuitize his or her benefits.

10.– (1) The criteria described in this section must be met before the Commission may consent to the payment of money that is surplus out of a continuing pension plan to the employer.

(2) All persons who are entitled to receive benefits under the pension plan and all members must consent to the terms upon which the surplus is to be paid out of the plan.

(3) All persons in respect of whom the administrator has purchased a pension, deferred pension or ancillary benefit, other than those persons who requested that the administrator do so, must consent to the terms upon which the surplus is to be paid out of the pension plan.

Subsection 10(3) of the Regulations makes it clear that the consent of “involuntary” annuitants is required in respect of withdrawals of surplus from on-going plans. The absence of similar language in s. 8 of the Regulations reinforces the conclusion that annuitants were not to be included in the former member consent group in s. 8 of the Regulations.

The Commission asked itself whether adopting an interpretation which excludes annuitants could lead to the situation where an employer annuitizes a large number, or all, of the plan former members prior to dealing with surplus in order to avoid having to obtain their consents to the surplus distribution. This would have the effect of increasing the funds available to any group of members or former members with funds still in the plan as the size of the group entitled to share in surplus would be reduced. In order to prevent this mischief, the Commission’s policy states that those who are annuitized close to the wind up date are to be included in the sharing group.

But, a more fundamental question presents itself. Is such an interpretation manifestly unfair to annuitants? If it is, the Commission must go further in its deliberations as an interpretation which is manifestly unfair to a group would be a contravention of the objects of the Act.

We wish to state that we are sympathetic to the claims of the annuitants. We accept that their participation in the pension plan probably contributed to the accumulation of surplus. However, we cannot find their exclusion to be manifestly unjust for the following reasons.

Where a pension plan at the date of wind up is in a deficit position, it is not permissible under section 77 or any other provision of the Act to reduce the benefits being paid or previously guaranteed by the insurer under a purchased annuity. This means that the benefits of those who have been annuitized are more secure than those whose benefits are

being provided for under the plan. Annuitants will have the protection of a guaranteed annuity from an insurance contract as well as the additional protection of CompCorp Insurance coverage.

As well, s. 43 of the Act permits a plan administrator to settle its benefit obligations under a plan through the purchase of an annuity from an insurance contract. Since such a purchase requires withdrawal of monies from the pension fund and a transfer of funds to the insurer, subsections 43(2) through 43(6) apply. These subsections set out various solvency and other restrictions that are imposed on a plan administrator before it withdraws monies from a pension fund to purchase annuities. Subsection 44(6) deems an insurance company from which an annuity was purchased to be “the administrator” in order to apply various provisions contained in S. 44 on the insurance company. Such a provision would be unnecessary if the purchase annuity remained part of the pension plan. It would seem that the Act has not recognized purchased individual annuities as remaining in a pension plan.

We were urged to consider the rationale that administrative difficulties led to the exclusion of annuitants from the former member consent group. It was said that, in many circumstances, it is not possible for an accurate list annuitants to be obtained after a significant time period has elapsed from the dates of the annuity purchase. Typically, an employer would not continue to maintain up-to-date records for individuals who have been annuitized as the insurer assumes the benefit liability and notifies the individual of that assumption. The insurer may not retain records indefinitely concerning the pension plan from which the funds to purchase the annuity were obtained as the insurer’s on-going obligations are with respect to the individual annuitant rather than the plan and plan administrator. Requiring all annuitants from the inception of a plan to be part of a surplus sharing group could make settlement impossible in many situations due to the inability to establish contact with members of a group. It may be that these types of considerations were in the minds of those responsible for creation of s. 8(1)(b). In light of our interpretation of those provisions, we need not decide whether such considerations are properly taken into account when interpreting the subsection.

Does an interpretation which excludes annuitants from the former member consent group lead to the possibility that a plan administrator could purchase annuities for active members and thereby exclude them from the consent group envisioned by s. 8(1)(b)(ii)? It is highly unlikely. If nothing else, it is likely that the plan documents would specifically state that the plan administrator would hold the individual annuity contract in trust for those members.

Two points need to be made in concluding our discussion of the former employee consent group. First, the dissenting employee group asserted that it had been precluded access to the list of names of employees who were members of the groups and proof that such individuals had entered the surplus sharing agreement. We would point out that for a surplus withdrawal application to be complete, it must contain sufficient evidence to satisfy the Commission of who belonged in the group and who had entered into the surplus sharing agreement. This information becomes a matter of public record once the application is filed with the Commission and, therefore, should be available to interested parties such as the dissenting employee group. In this case the Commission, through its pre-hearing conference procedure, directed that the information be made available through the Superintendent's staff.

We would urge on all applicants the need to be aware of their obligations and to fulfil them. An application must contain information as to the list of employees who were plan members and proof that such individuals entered into the surplus sharing agreement. The staff at the Commission then "audits" the information. Once the application has been filed and while staff is reviewing the information, anyone with an interest in the matter may review the listing. Those who oppose an application are free to challenge the accuracy of the list or the percentage of individuals stated by the applicant to have consented to the surplus sharing proposal. It is preferable that they give the substance of their objections to the staff of the Commission but they are always free to oppose the application before the Commission on any and all relevant grounds.

The second matter that arises in the context of the former employee consent group relates to Mr. Shand. As previously stated, the Commission's published policy is that pensioners annuitized "shortly before the date of wind up" may be included in the former member consent group. Mr. Shand was the only member to be annuitized in 1991. The downsizing that triggered the partial wind up occurred in September or October of 1991 but the wind up date chosen was July of 1991. We were told that Mr. Shand's early retirement did not relate to the downsizing but took note of the fact that it took place only three months before the effective date of wind up; indeed, he continued to work on a contract basis after the effective date of wind up. It would seem that Mr. Shand is caught by the spirit which underlies our stated policy and we would direct the parties to reconsider Mr. Shand's possible entitlement on that basis. If they are unable to reach an agreement in that regard, they may apply to the Chair for further direction on the matter.

Having found that annuitants are not within the intended meaning of s. 8(1)(b)(iii), it is necessary to determine whether the degree of consent that Ferro obtained in this category

was sufficient. It will be recalled that 2 of 4 persons or 50 percent of the group consented. Unlike s. 8(1)(b)(ii), in which the legislature fixed the degree of required consent at two thirds, no specific degree of consent is mandated by s. 8(1)(b)(iii). Rather, the clause expressly requires the Commission to consider the exercise of its discretion and to decide whether that requirement has been satisfied.

The dissenting employee group urged the Commission to find that an insufficient number of consents had been obtained in the category. The substance of their submissions on this point are set out below with the Commission response following each.

1. The annuitized former members were not included.

As the preceding paragraphs of this decision shows, they were not required to be included in the group. As Ferro did not have to include them, its failure to do so cannot be a factor in the exercise of our discretion.

2. Ferro did not provide members with a copy of written legal advice on the question of surplus entitlement which it obtained and paid for personally.

There is no obligation on Ferro to give out legal advice it has sought and paid for personally. Had the information been obtained in its role as administrator and paid for from the plan funds, our view might have been very different.

3. The notice of the surplus application that Ferro distributed did not state that recipients should seek legal advice about their rights.

There is no obligation under the Act or Regulations to include such a statement on the notice. While it may be desirable to include such a statement, we cannot hold against Ferro failure to include such a statement. In any event, in this case many interested persons did seek legal counsel as is evident from the fact that the dissenting employee group was represented by legal counsel.

4. The conduct of those members of the Mercer company who were involved in the preparation of the application was said to be improper. We quote:

In the context of a contentious matter, such as this, it is in or [our] submission inappropriate for professionals and lawyers representing the company to contact plan members for any purpose relating to a proposed surplus sharing agreements when those individuals have not been provided [with] or obtained independent legal advice.



The evidence before the Commission was that someone from Mercer's called those in the consent group who had failed to return the consent forms and requested return of the same. This does not seem improper. The Commission needs full information in order to deal with surplus applications made under the negotiated surplus sharing provisions including how many consent forms were sent out, how many signed and returned, how many recipients could not be located and how many had not returned the forms. If the telephone calls were purely to request the return of the forms, it goes towards fulfilling the obligations to give full information to the Commission. Obviously, if pressure were being exerted during the phone calls, we would have concerns about the validity of the consents but the mere request for the return of a form does not amount to duress or the like or suggest that the consents are somehow invalid.

If the allegation is meant to suggest that a Mercer employee who is a lawyer, acted improperly in going behind counsel for member, that would seem to be matter to be taken up with the appropriate governing body.

5. Less than two thirds of the former member group consented.

The Commission has a written policy which states that it will treat the former employee consent group in a fashion similar to that created by the legislation for the active employee consent group; thus, it is Commission policy to look for consent by two thirds of the former employee consent group.

The two thirds guideline set by the Commission is only a policy. Like any policy (as distinguished from a legislative requirement), it cannot be blindly adhered to. The Commission must consider each case on its merits to determine whether an "appropriate" number of consents have been obtained.

We find that 2 of 4 consents in the former member consent group is sufficient. If we required any additional consents, we would be asking Ferro to attain a higher standard than that expressed in our policy as the requirement of even one more person would make it a 75% hurdle. We are also influenced by the relative sizes of the two groups. There are only four members in this group whereas there are 82 members of the active employee group of whom 56 consented to the application. Finally, as our reasons indicate in Issue #2, it would appear that Ferro is entitled to the surplus. In these circumstances, 2 of 4 consents is appropriate.

## Issue #2      Clause 79(3)(b)

Having found that Ferro satisfied the requirements of s. 8(1)(b) of the Regulations, the Commission must determine whether Ferro met the requirements established in subs. 79(3) of the Act. In Issue #3, below, we consider whether the surplus allocation formula proposed by Ferro caused it to fail to satisfy clause 79(3)(d). In this portion of our reasons, we must determine the matter of surplus entitlement. That is, we must decide whether Ferro met the requirements of clause 79(3)(b) of the Act, set out again now for ease of reference.

- (3) The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless, ...
  - b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan; ...

It will be recalled that Ferro established a trust to secure the pension plan assets in 1945 and that in 1961 all the assets held in trust were transferred to a group annuity contract numbered GP 2715. If, in 1961, Ferro's actions had the effect of revoking or terminating the trust, then contract principles operated from 1961 onwards. On the basis of contract law principles, Ferro was able to validly insert the provisions giving it entitlement to surplus funds. Thus, we must determine whether contract law became operative in 1961. In effect, we are asking whether the assets held pursuant to the 1945 Trust Agreement could change their nature, in 1961, to funds subject to contract law.

The dissenting employee group argued that Ferro gave up all claim and/or entitlement to the trust funds by virtue of Article XIII(1) (set out below) of the 1945 Trust Agreement with the consequence that the funds became irrevocably impressed with a trust in favour of the employees and Ferro could not revoke the trust. Ferro, on the other hand, argued that in 1961 the trust was revoked or terminated. To determine what occurred legally, we must begin by recalling what took place in 1961.

In 1961, just prior to entering into GP 2715, the 1945 Trust Agreement was in effect; Article XIII(2) purported to give Ferro an express power of revocation subject to the condition that revocation could "not adversely affect the rights already acquired by the Participants". Article XIII(3) of the 1945 Trust Agreement set out that certain events were to take place "in the event of revocation". The relevant sections of the 1945 Trust Agreement are set out now.

### Article XIII(1)

The Employer shall have no right, title or interest in or to any Contract, funds or property held by the Trustees or forming a part of the Plan except as specifically provided in this Agreement.

### Article XIII(2)

The Employer shall have the right to alter, amend or revoke this Agreement or this Plan; provided that such alteration, amendment or revocation shall not adversely affect the rights already acquired by the Participants.

### Article XIII(4)

In the event of revocation, the Employer shall instruct the Trustees

- (a) to assign and turn over to each Participant the Contract then held by the Trustees in respect of each Participant and all the rights, title and interest of the Trustees therein and in the monies payable thereunder, and
- (b) to distribute any monies then held by the Trustees pro-rata to the contributing Participants, or if there then be no contributing Participants, to the Participants receiving benefits from the Plan.

In anticipation of entering into GP 2715, By-law No. 17 was passed which stated that it "terminated and revoked" the trust; as well, the Terminating Agreement was executed which purported to end the 1945 Trust Agreement. Clause 6 of the Terminating Agreement transferred all of the assets of the trust into the Group Contract (GP 2715) stating that it did so in "substitution for" the benefits under Article XII (4).

The relevant terms of By-Law No. 17 state:

1. By-Law No.12 of the company be and the same is hereby revoked as of June 1, 1961.
2. A certain agreement made as of June 1, 1945 between the company, certain employees of the company and certain trustees providing for a retirement pension plan ... be and the same are all hereby likewise terminated and revoked as of June 1, 1961, provided that such revocation shall not affect adversely any rights therein already acquired by the employees.

The relevant terms of the Terminating Agreement are those in sections 1, 4 and 6.

1. The Principal Agreement as amended ... shall terminate and in the place and stead of the

individual contracts ... pensions shall be secured hereafter by means of a Group Permanent Pension Contract numbered G-2715 ...

4. The equitable value of each individual contract ...shall be transferred to the Group Contract for the benefit of the employees in respect of whom the surrendered individual contract was issued.
6. The terms of Section 4 of Article XIII of the Principal Agreement shall not be put into effect, the parties hereto agreeing to the substitution of the benefits of the Group Contract for all the rights and benefits provided by the Principal Agreement and the First, Second, Third and Fourth Amending Agreements.

What is the meaning of "revoke"? Could the 1945 Trust Agreement be revoked? These are interesting questions of trust law for which there are no pat answers.

We understand completion of a trust to mean distribution of all the assets held by the trust to the beneficiaries. We understand that termination of a trust means the trust has come to an end. We know that a trust can be terminated through completion or through use of the Saunders v. Vautier principle, a principle which requires the consent of all beneficiaries to the ending of the trust. Neither of these types of termination occurred. In making this statement, we are expressly rejecting the arguments of Ferro that the act of placing the trust assets in GP 2715 for the benefit of plan participants ended the trust. If that argument were to prevail, it would make nonsense of the well accepted notion of tracing of trust assets. We do not understand Joy Technologies Canada v. Montreal Trust Company of Canada (unreported) (Ont. Ct. of Justice, General Division), No. 196/91, April 7, 1995 as standing for that proposition. If it does, with all respect, we disagree.

In our view, the trust was ended by the act of revocation evinced through By-law No. 17 and the Terminating Agreement. Both purported to use the express power of revocation contained in the 1945 Trust Agreement. While we normally think of revocation as the act of "pulling back" the subject matter of the trust in whole or in part, in this case what Ferro did was revoke its intention to create a trust. Basic trust principles stipulate that to create a trust, the three certainties must exist: certainty of intention, certainty of subject matter and certainty of object. On the facts of this case, the act of revocation had the effect of cancelling the requisite certainty of intention as it clearly expressed the fact that Ferro no longer wished to create a trust. This could not have the effect of changing the past (i.e. of cancelling the trust that existed from 1945 to 1961) but it did have the effect of cancelling the trust in the future.

The next question is whether Ferro properly revoked the trust. It will be recalled that Article XIII(2) did not give Ferro an unfettered right to revoke. The power of revocation was limited by the caveat that "revocation shall not adversely affect the rights already acquired by the Participants". If the revocation (i.e. cancellation of the intention to create a trust) adversely affected the rights acquired by the Participants, then it would not be valid. However, in this case, the entire assets held in trust were transferred to GP 2715 for the benefit of participants so there was no adverse effect to rights already acquired. But, it was argued, loss of the right to surplus which had been created in the 1945 Trust Agreement was loss of an acquired right. The Supreme Court of Canada has answered that in the *Schmidt v. Air Products* (1994), 115 D.L.R. (4th) 631 (S.C.C.) case stating that the right to surplus does not crystallize until the time of termination of the trust. The foregoing analysis shows that the trust was terminated in 1961 thereby crystallizing rights to surplus but all funds were transferred to the benefit of the plan participants therefore they received whatever surplus there was.

It cannot be that Ferro could never "cancel" the right to future surplus otherwise there would be no meaning to the word "revocation" and the Supreme Court of Canada, in the *Schmidt* case, clearly recognized that a right to revocation could exist and where it does it permits a settlor to change entitlements. In this case, as noted, the right to change entitlement was limited to possible future rights because of the caveat contained in Article XIII(2).

Therefore, in 1961, the trust ended and, as GP 2715 was a contract, the rights of the respective parties were thereafter determined according to contractual principles.

Article XIII(4) required certain things to take place "in the event of revocation". The dissenting employee group asked us to find that those events had to take place in order for revocation to occur. However, that is not what the article says. It says that if revocation occurs, certain events were to follow including the turning over of the contract to participants. While the contracts were not turned over, they were transferred to GP 2715 for the benefit of the participants so that while a technical breach might have occurred, there was no loss to the participants. It is not clear that even a technical breach occurred in light of the terms of the Terminating Agreement.

In conclusion, we find that Ferro terminated the 1945 Trust in 1961 through an exercise of its power of revocation, a power expressly conferred on it by the trust agreement. The power was subject to conditions which were fulfilled. From 1961 onwards, the provision of pension benefits was by means of a contract which contained an unrestricted right of amendment which empowered Ferro to amend the plan to provide for surplus reversion to it.

Before turning to Issue #3, we wish to comment on the standard to be applied by the Commission in determining whether Ferro satisfied clause 79(3)(b). In previous decisions, the Commission has suggested that in order to give meaning to the clause in light of the passage of s. 8(1)(b) of the Regulations, the standard to be applied is one of reasonableness. In light of our determination that Ferro is entitled to the surplus, we need not finally decide the question of the standard to be met.

### Issue #3      Surplus Allocation Formula

The dissenting employee group asked the Commission to withhold its consent to the application on the basis that the proposed surplus distribution formula was inequitable. It was their position that "the allocation formula is defective in that it excludes pensioners who have been annuitized, and designated members of the Plan who did not contribute to the Fund. The methodology of returning contributions plus interest is not appropriate for this type of pension plan, and not endorsed by the Pension Commission Policy."

The allegation that the formula is defective for failing to include annuitants has been dealt with as part of Issue #1 above. This leaves the question of whether the proposed formula is inequitable by virtue of the fact that it treated differently those who had contributed to the plan from those who had not. Before addressing the merits of this issue, we must ask whether the Commission has the jurisdiction to question the surplus allocation formula where the Superintendent has previously approved the wind up report which contains the formula.

We are of the view that the Commission has the power to review the Superintendent's decision in respect of a surplus distribution formula for two reasons. First, s. 96(a) gives the Commission the overriding obligation to administer the Act and the filing of a wind up report is mandated by the Act. As well, the Commission is expressly empowered to appoint the Superintendent who is given the power to approve wind up reports under s. 70. To fulfil these obligations, by necessary implication the Commission has the jurisdiction to supervise the Superintendent in the exercise of his powers.

Alternatively, we hold that the Commission has such jurisdiction under clause 79(3)(d) of the Act which prohibits the Commission from consenting to a surplus withdrawal application unless "the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus money out of a pension fund". The breadth of this language must include being satisfied that the applicant has properly fulfilled its obligations in respect of the wind up report filed pursuant to the provisions in s. 70.



However, while the Commission holds that it has jurisdiction to undertake such a review, it will not do so lightly. To review the exercise of the Superintendent's powers in respect of wind up reports without good reason would be to undermine the scheme of the legislation which clearly places the primary obligation to approve such matters on the Superintendent courtesy of s. 70. Approval of the wind up report is the responsibility of the Superintendent. We must be able to rely on the Superintendent (and staff) to have fully reviewed all reports before we undertake a determination under s. 79(3). The Commission will not perform the Superintendent's job nor review the exercise of his authority without good reason. (We trust that it goes without saying that all interested persons in a matter are encouraged to give their input to the Superintendent at the earliest possible stage in a proceeding.)

The Commission will undertake a review of the Superintendent's decision where there is evidence presented to it which suggests that the Superintendent's decision was unfair or unreasonable or that he acted improperly in arriving at his decision.

There is nothing in the arguments made which suggest that the decision was unfair, unreasonable or arrived at improperly. The mere fact that a different method could have been used does not raise the presumption the formula used was unfair or unreasonable. The fact that groups of people are treated differently, based on whether they contributed to the plan or not, does not amount to evidence that the formula is unfair or unreasonable.

In any event, the proposed surplus distribution formula appears to be appropriate in the circumstances. Policy Statement S900-900 relates to allocation of surplus distributed to members and former members on wind up. The statement discusses significant issues and includes examples of methods for surplus allocation and distribution. These are examples only and are not intended to be a list of all acceptable methods. For example, methods for defined benefit plans need not allocate surplus in proportion to liabilities, and methods for defined contribution plans need not allocate surplus in proportion to accumulated contributions plus interest. The Ferro plan had both contributory and non-contributory members. Even though

all members accrued defined benefits, sources of surplus would be expected to differ between the two distinct classes of member. The proposed formula appears designed to recognize surplus contributions from both classes, on two different basis. Contributors are allocated surplus in proportion to contributions plus interest, subject to a minimum. Non-contributors are allocated the minimum. This approach does not appear to be inconsistent with the objectives of policy S900-900.

In making its application, in accordance with point 7 of policy S900-900, the applicant provided the necessary description regarding protection of members' and former members' interests. Point 7 states:

"...other methods of allocating surplus will be considered. If another method is proposed, the applicant will be asked to describe why the recommendation is thought to protect the interests of the members and former members of the plan, pursuant to subsection 70(5) of the PBA".

In conclusion, we saw no reason to review the surplus allocation formula and the Superintendent's approval thereof.

## Conclusion

For these reasons, the application is granted. The Commission consents to the payment of surplus to Ferro in the amounts requested, consent not to be effective until the applicant satisfies the Commission that all benefits, benefit enhancements including enhancements pursuant to the surplus sharing agreement and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Dated this 19th day of December, 1995  
at the City of Toronto, Province of Ontario.

Eileen E. Gillese, Chair, Monica J. Townson, Vice Chair,  
Darcie L. Beggs, Member, C.S. (Kit) Moore, Member, Joyce  
A. Stephenson, Member

INDEX NO.

XDEC-33

PLAN

Caterpillar of Canada Ltd. Pension Plans for Hourly-Rated and Bi-Weekly Employees, Registration Numbers 0553214 and 0997494.

DATE OF DECISION

May 16, 1996

PUBLISHED BBS  
PUBLISHED

May 29, 1996  
Bulletin 6/4 (Fall - Winter 1997)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8;

## Reasons for Decision

AND IN THE MATTER OF a hearing by the Pension Commission of Ontario pursuant to subsection 89(8) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Pensions to refuse to approve a partial wind-up report pursuant to subsection 70(5) of the Act, respecting the Caterpillar of Canada Ltd. Pension Plan for Hourly-Rated Members of C.A.W. Local 252, Registration Number 0553214;

AND IN THE MATTER OF a Proposal of the Superintendent of Pensions to refuse to approve a partial wind-up report pursuant to subsection 70(5) of the Act, respecting the Caterpillar of Canada Ltd. Pension Plan for Bi-Weekly Employees, Registration Number 0997494;

## Between

CATERPILLAR OF CANADA LTD. - and -

THE SUPERINTENDENT OF PENSIONS - and -

CAW-CANADA AND LOCAL 252

**Before:** Eileen E. Gillese, Chair  
M. Elizabeth Greville, member,  
C.S. (Kit) Moore, member

**Appearances:** For the applicant: Mr. D. Shields,  
Mr. R. Bauslaugh  
  
For the Superintendent:  
Mr. Paul Dempsey, Mr. Shaun Devlin  
  
For CAW-Canada and Local 252:  
Mr. Lewis Gottheil, Ms. J. Hannah

**Hearing Date:** April 30, 1996  
Toronto, Ontario

## Nature of the Application

Caterpillar of Canada Ltd. ("Caterpillar") closed its Brampton manufacturing facility. As a result, Caterpillar filed partial wind up reports with the Superintendent of Pensions for the Province of Ontario (the "Superintendent") pursuant to subsection 70(1) of the *Pension Benefits Act*, (the "Act") for the Pension Plan for Hourly-Rated Members of C.A.W. Local 252, Registration Number 0553214 and for the Pension Plan for Bi-Weekly Employees, Registration Number 0997494 (the "Pension Plans").

The Superintendent issued notices of proposal to refuse to approve the partial wind up reports. The reason given by the Superintendent for his refusal to approve the partial wind up reports was that the members

"whose combination of age plus years of continuous employment or membership in the plan equals at least age 55 at the effective date of partial wind up, have a right to receive pensions in accordance with Part I, section 2(c) of the [plan] beginning at the date they would have been age 50 with 10 years of service had the [plan] not been partially wound up."

The partial wind up reports had provided for such benefits to be payable beginning at age 55 (not age 50 as the Superintendent wished) and 10 years of service.

Under the authority of subsection 89(6) of the Act, Caterpillar sought a hearing before the Pension Commission of Ontario (the "Commission") in which it asked the Commission to direct the Superintendent to approve the partial wind up reports, as filed. The Superintendent, by virtue of subsection 89(11) of the Act, was a party to the hearing. The National Automobile, Aerospace, Transportation and General Workers Union of Canada ("CAW-Canada") and its Local 252 (the "Union") was the exclusive bargaining agent for employees who participated in the pension plans. It, too, was a party to the hearing.

Written submissions were filed with the Commission and on April 30, 1996, the Commission heard oral argument by the parties.

## The Facts

The Union and Caterpillar negotiated collective agreements which established terms and conditions of employment including pensions, group insurance and supplemental unemployment benefits. The collective agreements established procedures for resolving disputes between the Company and union members relating to terms and conditions of employment. The collective agreements were subject to supplemental agreements.

The supplemental agreements relating to pensions were negotiated by the Union and Caterpillar. The terms of each agreement were September 1, 1989 to September 1, 1995. The supplemental agreements (including plan texts and letters of agreement relating to pensions which are a part thereof) were filed for registration under the Act as documents that create and support the Pension Plans.

On June 5, 1991 Caterpillar announced its intention to close the Brampton plant after relocating the business carried on at that location. The relocation occurred over a period commencing in July, 1991 and ending in 1992.

In the period June 12-14, 1991, Caterpillar negotiated the Brampton Plant Reduction Agreement with the Union to "resolve all issues that have arisen as a result of the Employer's decision to permanently reduce its facility in Brampton".

A "Pension Supplement" in respect of each of the Pension Plans was attached to the Brampton Plant Reduction Agreement "to determine the respective rights and obligations of the Company and all employees affected by the partial termination" of each plan and to provide "certain additional entitlements".

Caterpillar filed partial wind-up reports in respect of the Pension Plans with the Superintendent. The balance sheet for the Hourly Plan disclosed an unfunded liability of \$831,799 on total liabilities of approximately \$8.93 million. The balance sheet for the Bi-Weekly Plan disclosed a surplus of \$552,410 on total liabilities of approximately \$3.02 million. At the time the plant was closed, Caterpillar had written to the Superintendent acknowledging that a shortfall was likely and undertaking to contribute any amounts necessary to discharge unfunded liability for members affected by the partial plan wind ups.

Caterpillar applied for approval to pay out the basic benefits as set out in the partial wind up reports for those members and former members not affected by the issues to be determined in the hearing. The Superintendent approved such payment. However, as noted above, pursuant to subsection 70(5) of the Act, the Superintendent served on Caterpillar notices of proposal to refuse to approve the partial wind-up reports.

## The Issues

A pre-hearing conference was held on January 4, 1996. The results of the pre-hearing conference were agreed upon and set out in written form. The following extract from the pre-hearing conference memo sets out the substantive issues for determination at the hearing.

- (1) Whether the Superintendent has jurisdiction pursuant to section 70(5) of the Act to refuse to approve the partial wind-up reports in the circumstances of this case?
- (2) What is the correct interpretation of Part I, section 2(c) of the Hourly and Bi-Weekly Pension Plans and the Letters of Agreement in light of the Act, and in particular, section 74 of the Act?

### The Relevant Pension Plan Provisions

The relevant plan provisions are identical for both pension plans. Those relating to the hourly plan are set out now for ease of reference.

#### Part I, Section 2(c)

##### 2(c) Retirement at Company Option

An employee may be retired at the option of the Company or under mutually satisfactory conditions either

- (i) on the first day of the month following attainment of his fiftieth birthday and prior to the first day of the month following his sixty-fifth birthday if at the time of such retirement he possesses at least ten years of credited service; or
- (ii) on the first day of any month if he then possesses 30 or more years of credited service;

provided, however, that a discharge for cause prior to age sixty-five shall not be deemed a retirement under this paragraph.



### 3.1 Amount Payable.

- (a) Subject to Section 4, *an employee who retires pursuant to Section 2(a)(i); 2(b)(i), (ii) or (iii); 2(c); 2(d); or 2(e) on or after the effective date shall be entitled to receive a monthly basic pension for life in an amount equal to the applicable monthly amount derived from Paragraph III of Exhibit B, multiplied by his number of years of credited service; plus, except in the case of an employee who retired pursuant to Section 2(e), a supplemental benefit amount equal to the applicable rate derived from Paragraph IV of Exhibit B, multiplied by his number of years of credited service (up to a maximum of 30 years) at the time of his retirement, provided that the supplemental benefit amount shall be redetermined as of the first of the second month following the month in which the employee attains Statutory Benefits Age to be an amount (not exceeding Two Hundred Forty Dollars) equal to \$9.60 multiplied by his number of years of credited service (up to a maximum of 25 years) at the time of his retirement and reduced by his Estimated Statutory Benefit. Provided however, that if the retired employee makes application for use of actual Statutory Benefit within 12 months of his first day of eligibility for such Statutory Benefit and furnishes evidence satisfactory to the Company that the amount of his Statutory Benefit differs by at least \$1.00 per month from his Estimated Statutory Benefit, then in determining the benefit payable above, the amount of his actual Statutory Benefit shall be applied in place of such Estimated Statutory Benefit effective as of the date of his retirement.*
- (b) Subject to Section 4, an employee who retires pursuant to Section 2(a)(ii); 2(b)(iv); or 2(e)(iv) on or after the effective date shall be entitled to receive a monthly basic pension for life in an amount equal to the following:
- (i) the applicable monthly amount derived from Paragraph III of Exhibit B, multiplied by his number of years of credited service accrued after December 31, 1986, plus
  - (ii) increases since December 31, 1986 in the applicable monthly amount payable for retirements prior to December 31, 1986, multiplied by his number of years of credited service accrued before December 31, 1986. (emphasis added)

### 3.3 Retirement at Company Option

An employee retired pursuant to subsection 2(c) shall be entitled to receive, payable from actual retirement, the amount accruing to his retirement date as described in subsection 3.1 without reduction for retirement prior to age sixty-two.

### Letter of Agreement No. 4

Re: Standards for Application of Provisions Regarding Retirement at the Option of the Company or Under Mutually Satisfactory Conditions

Gentlemen:

Part I, Section 2(c) of the Pension Plan provides that an employee may be retired at the option of the Company or under mutually satisfactory conditions providing he is otherwise eligible. In either case, the following standards have been adopted by the Company as a guide in the application of these provisions in certain conditions of layoff or discontinuance of operations.

Retirement at the option of the Company or under mutually satisfactory conditions will be available at age 55 to an employee who is laid off at age 40 or older (i) as a result of a plant closing or discontinuance of operations, or (ii) whose layoff appears to be permanent, and in either case has not been offered suitable work by the Company in the same labor market area.

It is the position of the Company that if, as a result of a discontinuance of operations, there are employees age 55 - 64 who would otherwise not be laid off as a result of such discontinuance of operations, the Company will discuss with the Union, on a case by case basis, whether consideration is to be given to providing mutually satisfactory conditions retirements to such employees.

### **Issue #1 — Jurisdiction of the Superintendent**

This issue was originally formulated as:

Whether the Superintendent has jurisdiction pursuant to subsection 70(5) of the Act to refuse to approve the partial wind up reports in the circumstances of this case?

Caterpillar accepts that the Superintendent has the jurisdiction to determine how section 74 of the Act applies to the terms of the pension plans but argues that the interpretation of the pension plans (i.e. Issue #2, below) was a matter to be determined through the collective bargaining process. It based its argument on the fact that the terms of the pension plans were the subject of collective agreements with the Union; therefore, any complaint that the Union had concerning the terms of the pension plans was more properly a matter for arbitration or other relief under labour relations procedures. At the hearing, Caterpillar made it clear that its position was that there might be concurrent jurisdiction over the interpretation of the pension plan terms in question but that the Commission/Superintendent ought to allow the labour relations process to resolve such questions of interpretation.

With the benefit of these arguments, it can be seen that this issue is more subtle than was formulated at the pre-hearing conference. The issue can be usefully restated as follows.

Where a pension plan forms part of a collectively bargained agreement and a dispute arises over the terms of the pension plan, is the matter best decided by the Superintendent or through the labour relations process?

The answer to this question depends, in our view, upon the manner in which the dispute arose. As we explain below, in circumstances such as these where the dispute arises in the context of a pension plan wind up, the interpretation of the relevant pension plan provisions is best decided by the Superintendent.

In coming to this view, we begin by considering the statutory provisions relating to the filing and approval of wind up reports.

- 70.— (1) The administrator of a pension plan that is to be wound up in whole or in part shall file a wind up report that sets out,
- (a) the assets and liabilities of the pension plan;
  - (b) the benefits to be provided under the pension plan to members, former members and other persons;
  - (c) the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits; and
  - (d) such other information as is prescribed.
- (2) No payment shall be made out of the pension fund in respect of which notice of proposal to wind up has been given until the Superintendent has approved the wind up report.
- (3) Subsection (2) does not apply to prevent continuation of payment of a pension or any other benefit the payment of which commenced before the giving of the notice of proposal to wind up the pension plan or to prevent any other payment that is prescribed or that is approved by the Superintendent.
- (4) An administrator shall not make payment out of the pension fund except in accordance with the wind up report approved by the Superintendent.
- (5) The Superintendent may refuse to approve a wind up report that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members and former members of the pension plan.
- (6) On the partial wind up of a pension plan, members, former members and other persons entitled to

benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind up of the pension plan on the effective date of the partial wind up. 1987, c. 35, s. 71.

A reading of section 70 makes it clear that the Superintendent has a statutory obligation to decide whether to accept or reject any wind up report which is filed with the Pension Commission of Ontario. He must also do so in a timely fashion as an administrator cannot make payments absent the Superintendent's approval of the wind up report.

Subsections 70(5) and (6) of the Act expressly empower the Superintendent to refuse to approve a partial wind up report that does not meet the requirements of the Act and regulations. How can the Superintendent decide whether a wind up report properly provides for benefits — and therefore meets the requirements of the Act and regulations — unless he interprets the plan provisions? In our view, he cannot. Therefore, the power of the Superintendent to interpret the plan provisions is a necessary incident to the proper discharge of his obligation under subsections 70(5) and (6) to approve or refuse to approve wind up reports.

The authority to interpret terms relating to pension plans within collective agreements is, similarly, a necessary incident to the authority to ensure that the pension plans are being wound up in accordance with the Act. Thus, it is clear that the Superintendent has the authority to interpret pension plan provisions even where the provisions are contained in collective agreements.

In any event, it is not clear that this matter could be resolved through the labour relations process. Under the *Labour Relations Act*, if a difference between the parties arises from the collective agreement, the claimant must proceed by arbitration. But, here, the dispute did not originate with the Union or a plan member. The Union did not file a grievance in the matter nor did any plan member. It was the Superintendent and not the Union who had a difference with Caterpillar.

The Superintendent's obligation to consider wind up reports arises independently of the receipt of a complaint from a union or plan member. The Superintendent's jurisdiction to determine the meaning of plan provisions is independent of any dispute which may exist between Caterpillar and the Union over the interpretation of plan provisions. The dispute over the interpretation of plan provisions arose as a result of the Superintendent exercising his express authority to determine whether to approve the partial wind up reports. The fact that the Union chose to be a party to the matter does not change that finding. For these reasons, none of *Weber v. Ontario Hydro*, [1995] S.C.J. No. 59, *New Brunswick v. O'Leary*, [1995] S.C.J. No. 60 or *St. Anne Nackawic Pulp & Paper Co. v. Canadian Paper Workers Union, Local 219*, [1986] 1 S.C.R. 704 is applicable.



Even if there were concurrent jurisdiction, we would not stay these proceedings to allow the matter to be resolved through the labour relations process. The labour relations process that would be followed has not been specified. We have no idea of how long it would take. The Superintendent would not be a party to a proceeding under the labour relations legislation so there is a possibility that conflicting views of plan provisions could arise. Apart from the fact that an adjournment would lead to an obvious multiplicity of proceedings, it is indisputable that delay would occur. No advantage can be seen to arise from following such a process but the disadvantage in terms of delay is readily apparent in respect of plan members.

The matter in issue is one which the Superintendent and the Commission are uniquely qualified to determine as they have specialised knowledge and expertise in the pension field. Thus, there would be the additional prejudice caused by failing to have questions relating to pension plans resolved by the body with the greatest expertise in such matters.

The overriding obligation of the Commission is to ensure that pension plans in Ontario are administered properly. Part of proper administration must be to see that members of pension plans receive their benefits in a reasonable time. To adjourn these proceedings to allow for the labour relations process to determine the interpretation of plan provisions would be a needless bifurcation in process which would lead to prejudice and delay, as well as the possibility of conflicting results. This could not be seen to be consistent with the Commission's obligation to ensure that pension plans in Ontario are administered properly.

## Issue #2 — Interpretation of the Plan Provisions

Before turning to the relevant plan provisions, it is important to be clear about the group of members whose rights are in question. All parties agreed that the group consisted of those members who had not attained "50 and 10" at the date of plan wind up but who had "55 points" within the meaning of section 74 of the Act.

The effect of section 74 of the Act, as interpreted by the Ontario Court of Appeal in Firestone Canada v. Pension Commission of Ontario et al. (1990), 1 O.R. (3d) 122, (C.A.) is that those plan members whose combination of age plus years of service at the date of wind up equalled at least 55, were entitled to "grow into" the early retirement provisions of the Pension Plans. Caterpillar fully accepted that. The point of departure was this. Caterpillar's view of the Pension Plans, including the Letter of Agreement No. 4, gave those with 55 points the right to begin to receive unreduced retirement benefits at age 55. It was the position of the Superintendent and the Union, on the other hand, that the effect of the provisions was to entitle the group to begin to receive benefits at age 50.

To determine which view is correct, we must consider the relevant plan provisions. The effect of Part I, section 2(c) when read in conjunction with sections 3.1 and 3.3, is to give a plan member the right to retire at age 50 with an unreduced pension. This right is contingent upon Caterpillar's consent. However, subsection 74(7) of the Act deems that where the consent of an employer is an eligibility requirement to receive this type of benefit, "the employer shall be deemed to have given the consent". Thus, in the absence of the Letters of Agreement, on a plain reading of the plan provisions, the affected members would be entitled to receive the benefits at age 50.

Of what effect is Letter of Agreement No. 4? The parties were not agreed on this point. Caterpillar urged us to find that it formed a part of the Pension Plans but that it was not an amendment. It is clear that it was not part of the pension plans as originally drafted. Was it an amendment? If so, its terms are in conflict with section 2(c). The alternative view, as proposed by the Superintendent and Union, was that it was an explanation offered by the Company as to how it might exercise the discretion created in section 2(c). They pointed to the following words in the first paragraph:

"In either case, the following standards have been adopted by the Company as a guide in the application of these provisions in certain conditions of layoff or discontinuance of operations."

If the Letter of Agreement No. 4 was simply a guide as to how Caterpillar was to exercise its discretion, then it had no effect on section 2(c) in the situation of plant closure.

We acknowledge that the question of the legal effect of the Letter of Agreement No. 4 troubled us. In the end, we are of the view that it was merely a guide to the way in which Caterpillar might exercise its discretion in future. We formed this view for two reasons. First, it is the view most consistent with the actual language of the Letter of Agreement. It is based on the basic principle of interpretation of contracts that the documents are to be construed as a whole giving effect to everything in them if at all possible. It gives the words of the Pension Plans and Letters of Agreement their plain meaning.

Second, it is a view which is consistent with the way in which the wind up report treats those plan members who had attained "50 and 10" at the date of plan wind up. Those plan members who were "50 and 10" at the date of wind up did not have to grow in to the unreduced benefits. They were treated, in the partial wind up reports, as being immediately entitled to unreduced pensions. In Firestone, the Court of Appeal interpreted section 74 so that those who grew into benefits were to be placed in the same position as those entitled to benefits at the date of plan wind up. We are bound by that reasoning. In any event, there is no reason why those who were "50 and 10" at the date of wind up



should receive unreduced benefits beginning at age 50 but those who had 55 points at the date of wind up and later attained "50 and 10" should not receive unreduced benefits until age 55.

As a consequence of our findings on this issue, it is unnecessary to deal with the contentions made in relation to the *Income Tax Act*.

### **Conclusion**

The Commission dismisses the application brought by Caterpillar for an order directing the Superintendent to approve the partial wind up reports, as filed. The Commission directs the Superintendent to carry out the proposals in the notices of proposal (i.e. to refuse to approve

the wind up reports as filed).

The Commission assumes that Caterpillar will file amended partial wind up reports which comply with these reasons but, in order to preclude any uncertainty or delay, the Commission hereby directs the Superintendent to take such action as is necessary to obtain amended partial wind up reports which conform to the interpretation given in these reasons to Part I, section 2(c) of the pension plans and the letters of agreement in light of section 74 of the Act.

Dated this 16th day of May, 1996  
at the City of Toronto, Province of Ontario.

Eileen E. Gillese, Chair, M. Elizabeth Greville, Member, C.S.  
(Kit) Moore, Member

## PLAN

Imperial Oil Limited Retirement Plan (1988), No. 0347054 (C-8884) and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., No. 0344002 (C-4280), PBA 1990, c. 69(1)(d), s. 74, ss. 89(8)

## DATE OF DECISION

May 27, 1996

PUBLISHED BBS  
PUBLISHED

May 29, 1996  
Bulletin 6/4 (Fall - Winter 1997)

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c.P.8;

For the Respondent, Superintendent:  
Mr. Shaun Devlin,  
Mr. Paul Dempsey

**AND IN THE MATTER OF** a Proposal (the "Notice of Proposal") dated March 16, 1995 issued by the Superintendent of Pensions to make an order pursuant to section 69 of the *Pension Benefits Act*, in respect of the Imperial Oil Limited Retirement Plan (1988), Registration Number 0347054 (the "IOL Plan") and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration Number 0344002 (the "MFI Plan") (collectively the "Plans");

For the Entitlement 55 Group:  
Mr. Mark Zigler, Mr. Kevin MacNeil

For Mr. Harvey R. Newton:  
Mr. S. G. Foran

**Hearing Dates:**

December 4, 5, 6 and 7, 1995  
January 16, 17, 18, 29 and 30, 1996  
April 24 and 26, 1996  
Toronto, Ontario

**AND IN THE MATTER OF** a request for a Hearing before the Pension Commission of Ontario in accordance with subsection 89(8) of the Act regarding the Notice of Proposal concerning a proposed partial wind up of the Plans;

**Reasons for Decision****Between**

IMPERIAL OIL LIMITED - and -

SUPERINTENDENT OF PENSIONS - and -

CERTAIN MEMBERS AND FORMER MEMBERS OF  
THE PLANS REPRESENTED BY KOSKIE MINSKY  
("THE ENTITLEMENT 55 GROUP") - and -

HARVEY R. NEWTON

**Before:** Eileen E. Gillese, Chair,  
Monica Townson, Vice Chair,  
Joyce Stephenson, member

**Appearances:** For the Applicant,  
Imperial Oil Limited:  
Mr. J. Brett Ledger,  
Mr. Ian J. McSweeney

Nature of the Application

On November 29, 1995, the Superintendent of Pensions for the Province of Ontario (the "Superintendent") issued a Notice of Proposal (the "Amended Notice of Proposal") which amended a Notice of Proposal he had issued previously dated March 16, 1995. The Amended Notice of Proposal was issued pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, (the "Act"). The Amended Notice of Proposal advised the applicant, Imperial Oil Limited, that the Superintendent intended to make an Order that the Imperial Oil Limited Retirement Plan (1988), Registration No. 0347054 (formerly C-8884) and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration No. 0344002 (formerly C-4280) (the "Plans") be wound up in part in respect of those members and former members of the Plans who ceased to be employed by Imperial Oil Limited or participating employers (collectively, "Imperial Oil") effective between February 4, 1992 and June 30, 1995 or the date the last member of the Plans employed by Imperial Oil at its IOCO refinery ceased employment, whichever was later, as a result of:

- (i) the discontinuance of all or part of the business of Imperial Oil,
- (ii) the discontinuance of all or a significant portion of the business carried on by Imperial Oil at one or more specific locations, or
- (iii) the reorganization of the business of Imperial Oil.

The reasons given in the Amended Notice of Proposal by the Superintendent for the proposed order were as follows:

1. Imperial Oil Limited is the administrator and one of a number of participating employers in the Plans. The other participating employers are subsidiaries or partnerships of Imperial Oil Limited.
2. On or about February 4, 1992, Imperial Oil announced a number of intended actions designed to reorganize and rationalize its business. Imperial Oil carried out a number of these intended actions, as well as other such actions which were not announced.
3. A significant number of members of the Plans ceased to be employed by Imperial Oil as a result of the discontinuance of all or part of its business between February 4, 1992 and June 30, 1995 or the date the last member of the Plans employed by Imperial Oil at its IOCO refinery ceases employment, whichever is later, within the meaning of clause 69(1)(d) of the Act.
4. A significant number of members of the Plans ceased to be employed by Imperial Oil as a result of the reorganization of its business between February 4, 1992 and June 30, 1995 or the date the last member of the Plans employed by Imperial Oil at its IOCO refinery ceases employment, whichever is later, within the meaning of clause 69(1)(d) of the Act.
5. All or a significant portion of the business carried on by Imperial Oil at one or more specific locations was discontinued between February 4, 1992 and June 30, 1995 or the date the last member of the Plans employed by Imperial Oil at its IOCO refinery ceases employment whichever is later, within the meaning of clause 69(1)(e) of the Act.

The effect of a partial wind up of the Plans would be to give enhanced benefits to Plan members whose employment was terminated in the relevant time period and who met the requirements of section 74 of the Act.

Imperial Oil does not accept that a partial wind up of the Plans should be ordered. It requested a hearing in the matter,

pursuant to subsection 89(8) of the Act, before the Pension Commission of Ontario (the "Commission"). The Commission heard oral evidence and received volumes of written evidence over the course of nine days. It then received written submissions from the parties and heard oral presentation of the submissions for a further two days.

#### The Facts

Imperial Oil was the administrator of, and an employer under, the Plans during the time period which is of concern in this hearing, namely, October 1, 1991 to June 30, 1995. Approximately 70% of its outstanding shares were owned by Exxon Corporation, with the remainder being publicly held, during that time period.

During the relevant period, Imperial Oil was in the petroleum industry and its business operated in three main segments: natural resources (upstream), petroleum products (downstream) and chemicals.

Prior to February 4, 1992, Imperial Oil carried on business primarily through three operating units. Natural resources operations were carried on through Esso Resources Canada Limited. Petroleum products operations were carried on through Esso Petroleum Canada and chemicals operations were carried on through Esso Chemical Canada.

In October of 1990, Imperial Oil initiated a voluntary workforce reduction program. Under the Voluntary Program, employees were given incentives to voluntarily terminate; the incentives included early retirement packages and enhanced severance packages. By the end of April, 1991, approximately 2,833 of its employees had elected to leave Imperial Oil under the Voluntary Program.

Imperial Oil prepares corporate plans each year which are approved by the Imperial Oil Board of Directors, usually at its October meeting. On October 22, 1991, the 1992 Corporate Plan was presented to the Imperial Oil Board of Directors which estimated that during 1992 there would be a reduction in the workforce of 434 employees, a further reduction of 160 in 1993, 315 in the 1994 year and 305 in the 1995 year.

In late October and early November of 1991, senior management of Imperial Oil became aware that earnings were less than expected and that the company might face its first operating loss in history. On November 7, 1991, Mr. Haynes, the Chairman and Chief Executive Officer of Imperial Oil and Mr. Peterson, the President and Chief Operating Officer of Imperial Oil, met with senior management of Exxon corporation. They stated that the actions taken in 1990 and 1991 to reduce costs were insufficient to address the problem. They told Exxon that significant changes to the October 22, 1991 corporate plan were required. In the Exxon presentation, they stated:



"We now have to look for step changes in our organizational structure and business practice. Two areas offer us the greatest opportunity for improvement. These are petroleum products and our overall corporate organizational structure... it will represent significant changes to our present operations, and a significant departure from this Plan beyond 1993."

In a video taped message to employees given on December 12, 1991, Mr. Haynes stated that Imperial Oil's cost structure and the fundamentals of its organizational structure had to be "challenged" through "significant step changes". He indicated that the planning for such changes was "almost over".

On December 19, 1991, Mr. Haynes advised employees that the changes he had foreshadowed on December 12, 1991, would be announced on February 1, 1992.

In fact, the announcement was made on February 4, 1992, through a press release and speeches. The press release stated that:

"In a video presentation to employees today Imperial Oil announced sweeping changes in both how it will be organized and how its business strategy will adapt to marketplace realities. ..."

The speeches are replete with restructuring and reorganization phrases. They explain that structural change must take place which will lead to work force reductions. They indicated that the changes would involve a centralisation of control of the operating companies; consolidation of the business support functions of each division within the company's headquarters; disengagement from unprofitable lines of business; and rationalization of divisional and headquarters's operations.

After February 4, 1992, Imperial Oil carried out the announced consolidation of Esso Resources, Esso Products and Esso Chemicals operating companies into divisions of Imperial Oil. Business support functions were centralised and consolidated. Imperial Oil took steps to remove itself from unprofitable lines of business and focus on core parts of the oil and gas business. This led to the consolidation of functions; the sale of properties; the divestment of operations; and the closure of terminals, facilities, service stations, refinery and offices. From February 4, 1992 to the end of 1993, the work force shrunk by approximately 1300. Work force reductions from February 4, 1992 to June 30, 1995, were well in excess of 2000 even after excluding terminations relating to the sale of certain operations.

In March of 1993, the Superintendent appointed Mr. Larry Falconer to conduct an investigation to determine whether facts existed which warranted reasonable grounds for a partial wind up order under subsection 69(1) of the Act. Mr. Falconer focused on the period following February 4, 1992. Imperial Oil co-operated fully with the investigation; it provided documents and information and answered questions put to it. Materials gathered included internal announcement material, records relating to management, executive, directors' and committee meetings, and other matters relating to the announcement of February 4, 1992, or to any downsizing, restructuring, reorganization, consolidation, mergers, closure and disposals that occurred subsequent to the February 4th announcement.

Mr. Falconer's investigation took two years to complete; it was released on March 15, 1995. On March 16, 1995, the Superintendent issued the Notice of Proposal.

#### **Mr. Newton**

Mr. Newton was employed as corporate counsel for Imperial Oil in the Toronto office. At the time of termination in 1995, he had worked for Imperial Oil for 16 years.

In 1990, Mr. Newton advised Imperial Oil that he wished to accept a voluntary termination package so he could move to the United States to marry his fiancée who had a job and family in Texas. Instead, it was arranged that he would take a foreign assignment by Imperial Oil to Exxon Company U.S.A. Mr. Newton was to work at Exxon for three years and, if he did not obtain permanent employment with Exxon, he was to return to Toronto for a position with Imperial Oil. The three year term was subsequently extended by one year to November 30, 1995.

Mr. Newton was advised on July 14, 1995, that his employment with Imperial Oil would be terminated effective November 30, 1995. He continued as an employee of Imperial Oil until November 30, 1995 and continued to receive remuneration and accrue pension benefits. Mr. Newton asked that he be included within the partial wind up group. It was his evidence that the decision to terminate his employment was made within the wind up period and that it was only communication of the decision that occurred outside the period. He gave evidence that the reason his employment was terminated was the significant downsizing that Imperial Oil had gone through meant there was insufficient legal work to justify keeping a large law department.

## The Relevant Legislation

This matter will be decided on the basis of the words in clause 69(1)(d) of the Act and the facts. For ease of reference, clause 69(1)(d) is set out now.

69.– (1) The Superintendent by order may require the wind up of a pension plan in whole or in part if, ...

- (d) a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer; ...

## The Issues

Imperial Oil accepts that a significant number of employees ceased to be employed by it over the period of time in question. It argues that the terminations arose not as a result of a reorganization or discontinuance of business but from a drive by Imperial Oil to improve profitability through cutting costs, through striving to attain competitive industry "benchmarks" and as a result of cyclical fluctuations in the industry.

The following issues must be resolved, therefore.

1. Did the member terminations result from the discontinuance of part of Imperial Oil's business or from a reorganization of Imperial Oil's business or both?
2. If we find the answer to the first question to be "yes", then we must determine whether the Commission should substitute its own opinion for that of the Superintendent on the issue of whether to order a partial wind up.
3. If a partial wind up order is made, the appropriate commencement date for the wind up period must be established.
4. If a partial wind up order is made, it must be determined whether Mr. Newton is entitled to be included in the wind up group.

## Expert Witnesses

Imperial Oil sought to lead evidence from two expert witnesses: one an expert in management and the other an economist. The hearing panel ruled against admitting their evidence. Reasons for the decision were rendered orally at the time of the ruling but the panel thought it would be useful to include a brief summary of the reasons for the ruling at this time.

The hearing panel applied this test in determining whether to admit the evidence: would the evidence of either or both experts be potentially helpful to the panel? The panel was of the view that the evidence would not be. The central issue for resolution in this hearing is whether the termination of employment of large numbers of Imperial Oil employees was the result of a discontinuance of parts of the business or as a result of the reorganization of the business. Stelco Inc. v. Superintendent of Pensions (1993) 4:1 PCO Bulletin p.40 at p.45; aff'd (1994) 115 D.L.R. (4th) 437 (Ont. Div. Ct.); aff'd by Ontario Court of Appeal, September 11, 1995, Court file #C20030; leave to appeal refused, Supreme Court of Canada, March 21, 1996, Court file #24984., as decided by the Commission and upheld on appeal, established the legal parameters for what a reorganization is within the context of subsection 69(1). The courts specifically affirmed that the word ought not to be given the meaning it has in a corporate setting but, rather, the broader interpretation which the Commission had given it. Thus, it was hard to see of what use the views of an economist and an expert in management could be in interpreting the word "reorganization" in the context of pension legislation. The panel concluded that there was nothing to be gained by hearing from experts outside the pension field, that is, from people who did not know what the word "reorganization" means in the context of pension legislation.

It is important to note that Imperial Oil had been added as an intervenor in the Stelco case on the express condition that it would be bound by the legal principles established by it. We view the meaning of the word "reorganization" in the context of subsection 69(1), as interpreted by the courts, to be within the sentiment expressed by the endorsement which bound Imperial Oil.

After asking whether the views of the proposed experts would be of use, we went on to consider whether Imperial Oil would be prejudiced if we failed to admit the expert evidence. We concluded that Imperial Oil would not be prejudiced. Imperial Oil was still free to make argument about the meaning of "reorganization of the business", to attempt to establish that the terminations did not result from the reorganization of the business and to argue that no reorganization took place.

The Commission is master of its own processes, subject to the rules of natural justice. It cannot admit evidence which it feels has little or no chance of being helpful when it can see that admission of such evidence might cause prejudice to other parties. There are Plan members who have been waiting a considerable length of time to see this matter resolved. Had we accepted the expert testimony, the hearing would have been delayed for all the additional days in which it took to hear the evidence and then more time to allow the Superintendent to retain and prepare expert evidence to present an alternative view. Given the busy schedules of parties and their counsel and in light of the



fact that the Commission is comprised of part time members, the ensuing scheduling problems would likely to have caused months of delay. This did not seem to be a prudent course of action to follow where the evidence in question was unlikely to be of benefit.

Our ruling on this matter must be distinguished from our ruling in the previous hearing between these parties ("Imperial Oil #1"). In Imperial Oil #1, we accepted the evidence of an actuary on the commonly accepted meaning of pension terms. In the present hearing, the expert testimony would not have been from experts in the pension field nor would it have been on words that had a commonly accepted meaning.

Finally, we note that following our ruling, we advised counsel for Imperial Oil that although we would not accept the expert evidence, we would accept evidence on factual matters such as the cyclical nature of the resource business.

#### **Issue #1      Clause 69(1)(d) - Reorganization of the Business**

There is no dispute that a significant number of terminations took place over the relevant time period. Imperial Oil, however, submits that a reorganization of the business did not take place and, even if it did, that each event must be examined separately to determine whether it formed part of the reorganization of the business. As well, it submits that each termination of employment must be examined to see if it resulted from a reorganization of the business.

Imperial Oil submits that the vast majority of Plan members whose employment was involuntarily terminated were terminated for reasons of cost reduction associated with bridging benchmark gaps and that cost reduction measures do not amount to a reorganization of the business. With respect, we disagree.

Imperial Oil announced in February of 1992 that it was going to take significant steps to change the way in which it did business and it took those steps. As we noted above, operating companies were consolidated into divisions, support functions were centralized, properties were sold, various operations were divested and closed. The result was that a great many employees lost their jobs. The result also was that costs were cut. But, we cannot accept that if cost reduction is the reason to make major changes in the size, structure and functioning of a company, that it precludes a finding that a reorganization took place. We find that Imperial Oil implemented an extensive, large scale reorganization of its business between February 4, 1992 and June 30, 1995. We accept that the purpose of the reorganization of the business was to reduce costs and increase profitability but that does not change the fact that a reorganization of the business took place.

The following words from the Commission decision in Stelco Inc. v. Superintendent of Pensions et al. are applicable.

"In enacting section 69(1)(d) the Legislature was concerned about protecting older employees with appreciable amounts of service who involuntarily lose their employment as a result of a *major change in the way in which their employer carries on its business*. It is from that perspective that the term "reorganization" must be interpreted. (emphasis added)

The Divisional Court decision in Stelco expressly approved the approach of the Commission to the meaning of "reorganization", noting that the word should be broadly interpreted and may include the way in which different parts of the company relate to one another and the size of the company. In our view, the events between February 1992 and June 1995 constituted "a major change" in the way in which Imperial Oil carried on business.

Hawker Siddeley Canada Inc. v. Nova Scotia (Superintendent of Pension) (1993), 108 D.L.R. (4th) 95 (N.S. S.C.); aff'd (1994) 113 d.L.R. (4th) 424 (N.S. C.A.) is additional authority for this view of reorganization. It stated that reorganization of a business does not refer solely to a change in the organization of the company but also the way in which a company does business.

The "business of the employer" includes the structure under which the employer operates and, as well, the employees involved. (Hawker Siddeley at p.119 (N.S. S.C.))

Did a reorganization of the business of Imperial Oil take place? In our view the answer to that is an unequivocal "yes". The structural changes, divestment activity, consolidation of functions and elimination of non-core business activities all amounted to a change in the structure in which the business of Imperial Oil operated. We recognize that other words - such as restructuring - could be used to describe what took place but the reality is that the way in which Imperial Oil was organized to do business was materially changed and that amounts to a reorganization of its business, within the meaning of clause 69(1)(d).

For much the same reasoning, we reject the argument that the terminations were all part of the "ebb and flow" of the petroleum industry and therefore do not amount to a reorganization of the business. The magnitude of the terminations was much greater than any other in Imperial Oil's history. Even if we had been persuaded that there were historical terminations of a similar magnitude, the fact that cyclical patterns led to a reorganization of the business is irrelevant. The purpose of clause 69(1)(d) is to protect plan members in situations where a significant number of terminations occur as a result of a reorganization of the business. The reason that prompts the reorganization may



be cost cutting, bench marking or cyclical employment patterns due to price fluctuations but whatever the underlying cause, it is the fact of the reorganization that is of legal significance.

Did the workforce reduction result from those activities? Again, we answer "yes". Are we inclined to force the Superintendent to consider each termination over the 3 year period to ensure that the driving force was the reorganization? No. The amount of resources to do that would be enormous and it is not clear that accurate information could even be obtained. For example, if a lower performing employee is let go when the restructuring takes place, is the termination deemed to be a result of performance or the restructuring? If the employer and employee differed in their views as to what was the dominant reason, how would the dispute be resolved? This simple example illustrates the futility of such an approach. If it were to be done for literally thousands of employees, the task might never be completed. The information given by Imperial Oil itself shows that the terminations took place contemporaneous with the reorganization and were related to the activities we have found amount to a reorganization. There is no need to go behind that information.

Given our finding that a reorganization of the business took place between February 4, 1992 and June 30, 1995, there is no need to deal with the discontinuance issue.

**Issue #2      Should the Commission substitute its views for that of the Superintendent?**

When sections 69 and 74 of the Act are read together, it would appear that the legislative intention was to enable plan members with 55 points, on partial plan wind up, to receive an additional payment equal to the value of the section 74 grow in benefits. Given that this is the intention of the legislation, upon finding that the statutory pre-conditions contained in section 69 had been met, there would have to be a good reason to exercise our discretion and not order a partial plan wind up. To act otherwise would be to deny benefits to plan members which the legislation says are to be given to them. We would not upset the intent of the legislature as laid out in sections 69 and 74 without good reason. In other words, the intended operation of sections 69 and 74 is to protect employees who have been affected by a major change in the way in which the employer conducts business. Where the pre-conditions of wind up have been met, as in this case, wind up should be ordered unless there is a good justification for not so ordering one.

Imperial Oil argues that there is a good reason to exercise our discretion and not order the partial wind up. It argues that it offered the terminated plan members generous severance packages and when the packages are considered in conjunction with the voluntary retirement savings vehicles offered by Imperial Oil, that the terminated employees had been given a value which exceeded the value of additional benefits that Plan members would receive as a result of a partial wind up.

The hearing panel spent much time in ensuring that we understood the chart of information provided by Imperial Oil about the amounts given to terminated employees. We are not satisfied that benefits equal to those provided under section 74 were given to Plan members. The information contained in the chart related to severance packages but severance is the amount that must be given according to employment law principles. Those amounts involve common law notice periods for wrongful dismissal and statutory entitlements under employment standards legislation. Those amounts must be given regardless of whether "grow in" benefits must be given. To suggest that severance packages are to be compared to "grow in" benefits is a comparison of apples and oranges. Moreover, whether severance packages are generous or not cannot be determined by the Pension Commission. It is up to the courts to determine the amounts to be awarded for wrongful dismissal. Similarly, whether employees chose to contribute to voluntary retirement savings vehicles and obtain matching contributions from Imperial Oil during their period of employment is not relevant to the quantum of benefits the employees are to receive on termination of employment.

Had it been proven that benefits equivalent to those provided under section 74 been given, we would have been inclined to exercise our discretion and not order the partial plan wind up as the Plan members would have suffered no prejudice.

Having determined that we will direct the Superintendent to carry out his proposal to order the partial wind up of the Plans, it is unnecessary to determine whether we ought to give deference to the decision of the Superintendent to order the partial wind up. We note, however, that his decision followed a two year investigation in which Imperial Oil was given every opportunity to provide information, answer questions and give its version of events. As well, the Superintendent and staff have expertise and experience in these matters and are given much power under the legislation. These factors suggest that we ought to give some degree of deference to the Superintendent's views but a determination of that issue awaits another day.

**Issue #3      What is the commencement date for the partial wind up?**

The commencement date for the partial wind up contained in both the original Notice of Proposal and the Amended Notice of Proposal is February 4, 1992, the date of Imperial Oil's public announcement of the proposed changes. The Entitlement 55 Group took the position that the commencement date of the partial wind up order should be moved back to October 30, 1991. It argued that involuntary terminations increased from normal levels of roughly 1 - 5 per month in pre-July 1991 to levels of 35 - 71 per month after that date. There was evidence given that the increase in involuntary rates of terminations was due to termination of some of the lower performance employees in mid to late 1991.

The Entitlement 55 Group argues that Imperial Oil had in mind the concept of the downsizing program in the late fall of 1991 and that the increased numbers of terminations "must relate to Imperial's downsizing and restructuring efforts". Thus, the argument runs, the commencement date should be moved back to capture the terminated members at the start of the downsizing program.

We do not accept that the commencement date should be moved back. Clause 69(1)(d) makes it clear that the terminations must "result" from a discontinuance or reorganization. It is hard to be satisfied that the terminations in the late fall of 1991 resulted from a reorganization that had not yet been announced or undertaken. The steps involved in the reorganization set out above had not yet taken place so even if the terminations were in anticipation of changes to the business, they could not be the result of the reorganization. Being related to a reorganization is not the same thing as resulting from a reorganization.

It was the announcement followed by the events described above that constitutes the reorganization of the business and it is the terminations that occurred due to those events that are encompassed by the terms of clause 69(1)(d) of the Act.

In coming to our decision on this matter, we wish to note that there is a need in all parts of the pension community for certainty about commencement and end dates and how they are selected. The concept of a partial wind up which occurs over the period of several years is difficult for many in the pension industry to understand and accept, making it all the more important that there be some clarity about how the period will be determined. Using the public announcement date is an accepted way of determining a commencement date. If using the public announcement date as the starting point proves problematic, undoubtedly some other mechanism will be used. In this case, the facts are consonant with the view that reorganization did not take place prior to the public announcement on February 4, 1992.

Imperial Oil objected to the Commission's considering an earlier start date on the basis that the Superintendent had not conducted a preliminary inquiry directed at events pre-February 4, 1992. We reiterate the reasoning of the Commission in Stelco Inc. v. Superintendent of Pensions (re Veinot) PCO Bulletin, Vol. 4, Issue 1, p.48 at p.49:

This statutory scheme clearly contemplates that the Superintendent will inquire into a possible wind up before the Commission holds a hearing into the matter. Indeed, if the Superintendent declines to make an order, there will be no hearing. In short, the Superintendent must inquire into the matter before it comes before the Commission.

However, this case is distinguishable from Stelco. In Stelco, the proposed commencement date for the partial wind up was in 1992 and Mr. Veinot was asking that the date be effective in 1988. In this case, we are asked to consider moving back the date by only a few months. Moreover, there was some evidence in Mr. Falconer's investigation report about that period and some evidence was tendered at the hearing relating to the fall 1991 time period. The expense and inconvenience to all parties to require the Superintendent to conduct a further investigation is unnecessary as we are able to make the determination that the commencement date not be changed, for the reasons given above. Had we felt that there was good reason to consider moving back the commencement date, we would have remitted the matter to the Superintendent for investigation into whether the preconditions for a wind up existed. We would have remitted it - rather than deciding it ourselves - for reasons of fairness and for the reasons given in Stelco, quoted above. In that way, the processes prescribed by the legislation would be followed and affected parties would have adequate opportunity to provide input and information to the Superintendent.

**Issue #4      Mr. Newton**

The dates of the partial wind up as proposed by the Superintendent are February 4, 1992 to June 30, 1995. The wording of the proposed order extends to include only employees at the IOCO Refinery who were terminated after June 30, 1995. No party disputes the proposed end date of June 30, 1995.

Mr. Newton is not arguing that the end date ought to be extended but that he should be included in the group for the following reasons.

- (i) He is one of the plan members whose employment was affected by the events relied on by the Superintendent in the Notice of Proposal to order the partial wind up of the Imperial Oil pension plan;

- (ii) Including Mr. Newton is consistent with the purpose of the PBA;
- (iii) Mr. Newton should be treated no differently than those employed at the IOCO refinery who 'ceased to be employed' after June 30, 1995;
- (iv) In the alternative, for the purposes of the PBA, Mr. Newton's employment was terminated prior to June 30, 1995."

As we understand the law relating to employment, a contract of employment is not terminated until the end of the notice period when during the notice period the employer has the right to the services of the employee. Suleman v. B.C. Research Council (1990), 52 B.C.L.R. (2d) 138 (B.C. C.A.). We find that the effective date of Mr. Newton's termination of employment was November 30, 1995. Until that time, Mr. Newton was employed by Imperial Oil and receiving remuneration. The end date for the partial wind up order is June 30, 1995. To be included in the partial wind up group, Mr. Newton must have ceased to be employed during the wind up period. As he ceased to be employed outside the wind up period, he is not within the partial wind up group.

Mr. Newton argues that this is unfair as the termination of his employment was a result of the reorganization of the business. While the loss of employment may have been a consequence of the reorganization, we do not find that it was a direct result of the reorganization. It is not a question of whether reorganization led to termination but rather whether the termination occurred during the wind up period. If it were otherwise, the wind up period could extend indefinitely. For the termination to be part of the partial wind up, it must be part of the event of reorganization of the business and not some type of "spin off" consequence. We are of the opinion that the intention of clause 69(1)(d) is to

cover those employees who lose their employment as a direct result of the discontinuance of business or the reorganization of business. If the clause is interpreted so as to cover all members who lose their employment as an indirect result of changes in the structure or functioning of the business, there could be no end to the wind up period. The costs of a partial wind up can be very significant; there must be some degree of certainty about the setting of wind up dates. This certainty exists when the clause is understood to cover those whose employment is terminated as a direct result of the discontinuance or reorganization of business. For that reason, employees at the IOCO refinery who lost their employment are covered as the sale of the refinery was a direct part of the reorganization of business.

#### Order

The Commission hereby dismisses the application of Imperial Oil and directs the Superintendent to carry out his proposal to order Imperial Oil to partially wind up the Plans as proposed in the Amended Notice of Proposal. The commencement and end dates of the partial wind ups are to be in accordance with the Amended Notice of Proposal.

If any question arises as to the right of a member to be included in the wind up group, the matter is to be resolved in the normal fashion through the Superintendent and his staff. If any ambiguities arise from this decision and the reasons therefore, the parties may speak to the current Chair of the Commission. This can be arranged through the Registrar at the Commission, upon notice to all other parties.

**Dated** this 27th day of May, 1996 at the City of Toronto, Province of Ontario.

Eileen E. Gillese, Chair, Monica Townson, Vice Chair, Joyce Stephenson, Member

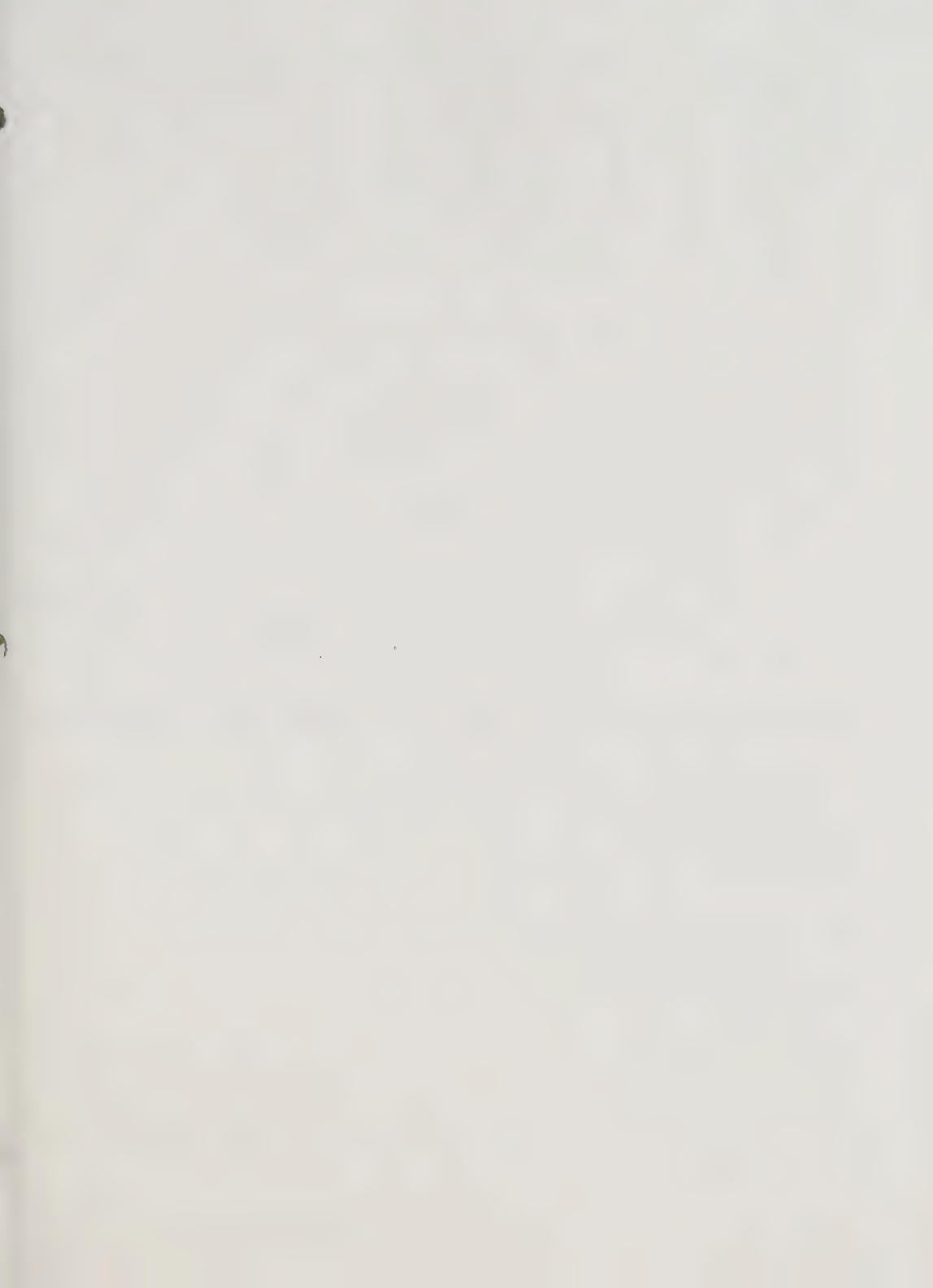


### Contacts for General Enquiries

AIR/PBGF Filings Enquiries	Gina Potter (fees, penalties, interest)	314-0672
	Rose-Anne Drakes (replacement forms)	314-0585
PCO Information Services Enquiries (Electronic & Print Publications)	Judith Chalmers	314-0699
General Inquiries		314-5993
Issues & Correspondence, FOIPOP* Requests & Media Enquiries	Anthony Gullone	314-0605
Policy Enquiries	Susan Ellis	314-0703
	Jules Huot (bilingual)	314-0613
	Cynthia James	314-0702
	Jerry Loterman	314-0561
Registrar to the Commission	Sharon Carr	314-0624
Secretary to the Chair and the Superintendent of Pensions	Anna Medeiros-Pinto	314-0628

**\*Written FOIPOP requests should be sent to:**

Mr. Ron Ward, Assistant Co-ordinator, Information and Privacy Office, Ministry of Finance,  
250 Yonge Street, 30th floor, Toronto, ON M5B 2N7. Phone: (416) 325-8369 or Fax: (416) 327-0941.



## A Conference

*"Pensions For Canadians -  
A Dialogue with the Regulators and Policymakers"*

will be held on February 24 and 25, 1997

at the Toronto Marriott Eaton Centre Hotel

For more information and registration forms contact:

Ms. Chris Lewis,  
CPBI (Ontario Region)  
123 Elmer Avenue  
Toronto, ON M4L 3R6

or call 416-699-0306  
or fax 416-699-6409

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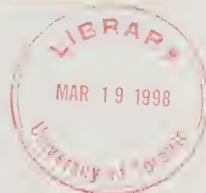


# THE PENSION COMMISSION OF ONTARIO

CA20N  
TR 600  
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# BULLETIN

January 1998



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## General Announcements

### New Communications Program in 1998

The January 1998 PCO Bulletin (Vol. 6, Issue 5) is the last PCO Bulletin distributed free-of-charge. Future PCO Bulletins will only be available to subscribers of the new communications program which is to be launched in mid 1998. This program is to be self-funding.

Program information and subscription order forms will be mailed to all those currently receiving the PCO Bulletin. Should you wish to be added to our mailing list, please contact Linda Stangl, Administrative Coordinator, Policy & Research Branch, at (416) 314-0694, fax (416) 314-0650.

**PCO Web Site:** [www.pensions.gov.on.ca](http://www.pensions.gov.on.ca)

The PCO will establish a web presence in February 1998 which will contain pension information aimed at the general public.

Additional information aimed at the pension industry, including PCO Policies, Decisions, Orders and Notices, will be accessible only to subscribers. Check the PCO website frequently for updates and information on the new communications program. Users will also be able to subscribe online!

### PCO mailing change of PBGF and AIR forms

The following announcement was uploaded to the PCO's Telix system on June 26, 1997:

#### Filing of PBGF and AIR Pre-printed Forms

In response to plan administrators' requests, the PCO is changing its practice for mailing these forms. In future, the forms will be issued three months after the pension plan's fiscal year end. This applies to defined contribution and defined benefit forms.

If there has been a change in consultants or agents preparing these forms since the last filing, the forms should be redirected to the appropriate person at the new firm in a timely fashion to avoid late fees and penalties. The new contact name and company information must be provided on the current year's filing.



## Contacts for PCO Enquiries

### Contacts for Pension Plan-Related Enquiries as of December 3, 1997

Plan Type/Alpha Range	Pension Officer	Telephone No.
DB A-BRI	Irene Mook-Sang	314-5957
DC J		
DB BRO-CONR	Steve Young	314-0646
DC U		
DB CONS - DS	Bill Qualtrough	325-9972
DC A		
DB DU - FZZ	Laurie Nuttall	314-0697
DC P		
DB G - HAZ	Norman Kelman	314-0596
DC H		
DB HEA - KMZ	Larry Martello**	314-0587
DC CHB - CZZ		
DB KNA - MOQ	Lynn Baron**	314-0690
DC B		
DB MOR - PNZ	Rosemine Jiwa-Jutha	314-0611
DC K		
DB POL - SHE	Carla Adams	314-0560
DC R		
DB SHI - TORO	Cary Wong	314-0547
DC E		
DB TORR - #'s	David Allan	314-0612
DC Q&V		

Plan Type/Sectors-Alpha Range	Pension Officer	Telephone No.
DB Agr/Mining/Const.	John Graham	314-0647
DC M		
DB Print/Publish/Public Adm	Penny McIlraith	314-0594
DC F		
DB Textile/Papers	Jaan Pringi	314-0586
DC S		
B Transp/Electrical/Equipment	Larry Martello	314-0587
DC W,X,Y & Z		
DB Primary Metals/Machinery	Rosemine Jiwa-Jutha	314-0611
DC D&O		
DB Trade / Commercial	Stanley Chan	314-0635
DC T		
DB Rubber/Plastics	David Allan	314-0612
DB Non/Metallic/Chemical	Lynda Ellis	314-0636
G&I		
DB Food / Beverages	Lynn Barron	314-0639
DC L&N		
DB Finance	Amin Purshottam	314-0548
DC CAA - CHA & # plans		

\*\*denotes temporary assignment

**Insolvencies****Alpha Range**

A - E &amp; T-#'s

F - S

**Co-ordinator**

Jai Persaud

Larry Falconer

**Telephone No.**

314-0595

314-0610

**Executive Offices**

Chair

Registrar

Administrative Coordinator

Kit Moore

Sharon Carr

Anna Medeiros-Pinto

314-0630

314-0624

314-0628

Superintendent

Executive Secretary

D. Ross Peebles

Franca Minichillo

314-0626

326-9263

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Administrative Coordinator

Pauline Dawson

Ann Marie Gumbs

314-0599

314-0589

Deputy Director, Actuary

Actuarial Consultant

Actuarial Assistant

Sr. Technical Consultant - Enforcement,

Insolvencies and Revenue

Consultant - Transfers, Refunds,

Mergers &amp; Conversions

Consultant - Wind-ups, Surplus

&amp; PBGF Claims

Consultant - Filings

George Ma

Grant Ardern

Mark Lucyk

Rick Kennedy

314-0557

325-3784

314-0778

314-0616

George Bahrynowski

314-0614

David Rogers

314-0597

Mark Henry

314-0584

**Contacts for Policy and Communications-Related Enquiries****Policy & Research Branch**

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Administrative Co-ordinator

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Linda Stangl

314-0588

314-0694

Technical Consultant

Sr. Policy Analyst

Sr. Policy Analyst

Sr. Policy Analyst

Policy Analyst

Jr. Policy Analyst

Acting Communications Officer

Communications Assistant

David Gordon

Jules Huot

Maureen Barber

Roberto Pegoraro

James DeMonte

Mathew Ou

Carrie Forrester

Anne Balfour

314-0615

314-0613

314-0645

314-0702

314-0600

314-0699

314-1042

314-0701

## **Members Sought for PCO Advisory Committees**

### **Invitation to Serve on the Investment Advisory Committee and the Legal Advisory Committee**

There will be vacancies for new members on the above noted committees. Qualified practitioners who are interested in serving on either of these committees are invited to contact the respective Chair to indicate their availability:

#### **Chair, PCO Investment Advisory Committee**

Mr. Michael J. Gallimore, CFA

President

NT Global Advisers, Inc.

Suite 440

20 Toronto Street

Toronto ON M5C 2B8

#### **Chair, PCO Legal Advisory Committee**

Ms. Dona Campbell

Partner

Sack, Campbell, Mitchell

Suite 1130, P.O. Box 180

20 Dundas Street West

Toronto ON M5G 2G8

The PCO advisory committees serve a vital function in the area of policy formulation and provide a link with all segments of the pension industry. The committees forge two-way communications links between the PCO and the legal, actuarial, investment and accounting and auditing communities.

## **Terms of Reference Common to All Advisory Committees**

At the request of the PCO, the committees review and comment on proposed amendments to the *Pension Benefits Act*, 1990 and Regulations, and on Commission policies and amendments prior to publication. The committees may also raise matters that, in the committees' opinion, should be reviewed including policies, practices and procedures. The committees review and comment on other matters as the Commission may request. The Director of the Policy and Research Branch serves as a liaison between the committees and the PCO.

## **Appointments and Terms**

Committee members are appointed, generally for a two or three year term, by the Chair of the Commission with advice from the Chair of the committee, the professional community, committee members and from other pension professionals practising in the field. The input from a variety of sources is valued and ensures that the committees are balanced and representative of all areas of practice.



## Special Interest

### Regulation to Amend Regulation 909 of the Revised Regulations of Ontario, 1990 made under the PBA: O. Reg. 286/97 indexed as YREG-23

SECTION:	Regulations
INDEX NO.:	YREG-23
TITLE:	O. Reg. 286/97
APPROVED BY:	Cabinet
TO BE PUBLISHED:	Ontario Gazette, August 16, 1997
EFFECTIVE DATE:	July 29, 1997

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#### REGULATION TO AMEND REGULATION 909 OF THE REVISED REGULATIONS OF ONTARIO, 1990 MADE UNDER THE PENSION BENEFITS ACT

Note: Regulation 909 has not been amended in 1997.  
For prior amendments, see the Table of Regulations  
in the Statutes of Ontario, 1996.

**1. Regulation 909 of the Revised Regulations of Ontario, 1990 is amended by adding the following section:**

- 10.1** (1) This section applies with respect to a payment from surplus out of a pension plan to the employer,
- (a) if a court has appointed an individual to represent persons described in subclause 8 (1) (b) (iii), persons described in subsection 10 (2) (but not members) or persons described in subsection 10 (3); and
  - (b) if the Superintendent certifies to the Commission (on the basis of such information and evidence as the Superintendent may require from the employer or administrator) that,
    - (i) in the case of a proposed payment to the employer from surplus out of a pension plan that is being wound up in whole or in part, the employer has obtained the written agreement referred to in clause 8 (1) (b) of 90 per cent of the former members who are in receipt of a pension payable from the pension fund on the date of the wind up, or

- (ii) in the case of a proposed payment of money that is surplus out of a continuing pension plan to the employer, the employer has obtained the consent of 90 per cent of the former members who are in receipt of a pension payable from the pension fund, whose consent is required by subsection 10 (2).

- (2) The court-appointed representative is authorized to give the written agreement referred to in clause 8 (1) (b) on behalf of the former members in receipt of a pension payable from the pension fund, who he or she represents. However, the representative is not authorized to give written agreement on behalf of former members who have agreed or have objected to the payment from surplus.
- (3) The court-appointed representative is authorized to give the consent required by subsection 10 (2) on behalf of the former members in receipt of a pension payable from the pension fund, who he or she represents. However, the representative is not authorized to consent on behalf of former members who have consented or have objected to the terms upon which the surplus is to be paid out of the plan.

Regulation to Amend Regulation 909 of the Revised Regulations of Ontario, 1990  
made under the PBA: O. Reg. 415/97 indexed as YREG-25

SECTION:	Regulations
INDEX NO.:	YREG-25
TITLE:	O. Reg. 415/97 (English)
APPROVED BY:	Cabinet
TO BE PUBLISHED:	Ontario Gazette, December 6, 1997
DATE FILED:	November 20, 1997

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**REGULATION TO AMEND REGULATION 909 OF  
THE REVISED REGULATIONS OF ONTARIO, 1990  
MADE UNDER THE PENSION BENEFITS ACT**

Note: Since January 1, 1997, Regulation 909 has been amended by Ontario Regulation 286/97. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1996.

1. Subsection 8 (3) of Regulation 909 of the Revised Regulations of Ontario, 1990 is amended by striking out "December 31, 1997" at the end and substituting "December 31, 1998".

---

## Enforcement Matters

### Ongoing Court Cases Under the PBA and Regulations

#### Maysfield Property Management (1987) Inc.

On August 15, 1996, charges were laid against Maysfield Property Management (1987) Inc. ("Maysfield") as employer and administrator of its pension plan, and against a director and officer of Maysfield. The charges relate to failure to comply with the Superintendent's demand for information under s. 98 of the PBA, and to failure to file valuation reports, annual information returns and financial statements. The first appearance was October 1, 1996. The trial began on April 3, 1997, and was completed on June 25, 1997. Three counts against the director and officer related to the Superintendent's demand for information under s. 98 of the PBA were dismissed. The Court reserved judgment on the remaining 16 counts. The decision is expected on January 15, 1998.

### Court Cases Concluded Under the PBA and Regulations

#### Thorco Equipment Inc.

On May 31, 1996, charges were laid against Thorco Equipment Inc. ("Thorco") as employer and administrator of its pension plan and against a director and officer of the company. The charges relate generally to:

1. a failure to remit contributions to the pension fund,
2. a failure to comply with a request for information made by the Superintendent of Pensions under s. 98 of the PBA and
3. numerous filing breaches, including a failure to file a valuation report, audited financial statements and annual information returns.

On November 5, 1996, Thorco and the director and officer pleaded guilty to the charges.

On March 4, 1997, the Court suspended sentence against the Company, but issued a probation order against both the Company and the director/officer requiring that restitution of \$72,223.84 be made to the pension fund. This amount represents the total employee and employer contributions owed to the fund from June 1, 1991 to June 23, 1993. In addition, the Court fined the director/officer \$3,000.

#### Mimik Industries Inc.

On April 18, 1996, charges were laid against Mimik Industries Inc. ("Mimik") as employer under its pension plan, and against the President of the company. The three charges relate to a failure to remit contributions to the pension fund over the period January 1991 to April 1996. On October 1, 1996, Mimik pleaded guilty. The sentencing of Mimik and the trial regarding the charges against the President were adjourned so that Mimik's plan could be voluntarily wound up and Mimik could begin to rehabilitate the pension fund by remitting \$2,500 per month on account of outstanding contributions. The monthly remittances commenced in November 1996 and have been made each month. In addition, the president transferred his share of the pension fund to the employees (approximately \$109,000).

On October 9, 1997, Mimik was sentenced to two years' probation. The major term of the probation order is that Mimik make full restitution to the pension fund of all contributions outstanding as at September 13, 1997 (\$99,393,00), together with interest. Mimik is to pay at least \$2,500 a month to the fund. The company is to report to the Superintendent monthly on the status of the restitution. The charges against the President of Mimik were withdrawn.



## Superintendent of Pensions - Notices and Orders

### Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) Forest City International Trucks Ltd. Non-Contributory Retirement Plan, C-15434, (effective May 25, 1991), November 18, 1996
- 2) Forest City International Trucks Ltd. Non-Contributory Retirement Plan, C-15354, (effective May 25, 1991), November 18, 1996
- 3) Standard Trustco Limited Designated Executive Employees' Retirement Plan, C-103419 (effective February 28, 1991), November 20, 1996
- 4) The Cutler Brands and Designs Pension Plan, 552620, (effective April 9, 1996), February 5, 1997
- 5) Pension Plan for Hourly Employees of North American Plastics Co. Ltd., 425934 (effective October 21, 1994), March 21, 1997
- 6) Agnew Group Inc. Retirement Plan, 552802 (effective January 12, 1996), May 16, 1997
- 7) Revised Pension Plan for Employees of Maplex General Insurance Company, 521278 (effective March 21, 1995), June 6, 1997
- 8) Pension Plan for Employees of Income Trust Company, 560235 (effective March 6, 1995), July 14, 1997
- 9) Retirement Plan for Salaried Employees of Epton Industries Inc., 0932202 (effective August 14, 1995), August 24, 1997
- 10) Pension Plan for Wage Employees of Epton Industries Inc., 950923 (effective August 14, 1995), August 24, 1997
- 11) The Pension Plan for the Staff of A.M.K. Investments Limited, 0997163 (effective February 29, 1996), August 24, 1997
- 12) Pension Plan for Employees of John T. Hepburn, Limited, C-5215 (effective July 6, 1994), August 28, 1997
- 13) Pension Plan for Hourly Rated Employees of John T. Hepburn, Limited Employed in the Plants of its Steel and Mechanical Divisions Located at St. Clair Avenue West, Toronto and Torbram Road, Mississauga in Ontario, Canada, 0592188 (effective July 6, 1994), August 28, 1997

- 14) Pension Plan for Salaried Employees of John T. Hepburn, Limited, 0598623 (effective July 6, 1994), August 28, 1997
- 15) The W.G. Young Co. Limited and Affiliated Companies Employees Pension Plan, 325290 (effective November 10, 1995), September 24, 1997
- 16) Retirement Plan for the Employees of Cody's Stores Limited, 401588, (effective April 30, 1996), October 7, 1997

### Notices of Proposal to Refuse to Approve a Partial Wind Up Report – Subsection 70(5) of the PBA

The Superintendent, issued Notices of Proposal to Refuse to Approve a Partial Wind Up Report pursuant to subsection 70(5) of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) The Upjohn Company of Canada, a division of The Upjohn Inter-American Corporation, 311084, November 21, 1996

### Orders - Section 69 of the PBA

The Superintendent issued Orders, pursuant to section 69 of the PBA [Wind-up Orders], as follows (effective date of wind up and date of order indicated, respectively):

- 1) Standard Trustco Limited Employees' Retirement Plan, 0556340 (June 28, 1991), October 21, 1996
- 2) Confederation Life Insurance Company Pension Plan for Canadian Field Representatives, C-14329, (effective between October 31, 1993 and August 12, 1994), January 27, 1997
- 3) Forest City International Trucks Ltd. Non-Contributory Retirement Plan, C-15434, (effective May 25, 1991), March 5, 1997
- 4) Forest City International Trucks Ltd. Non-Contributory Retirement Plan, C-15354, (effective May 25, 1991), March 5, 1997
- 5) The Cutler Brands and Designs Pension Plan, 552620, (effective April 9, 1996), April 15, 1997
- 6) Pension Plan for Hourly Employees of North American Plastics Co. Ltd., 425934, (effective October 21, 1994), May 7, 1997
- 7) Agnew Group Inc. Retirement Plan, 552802, (effective January 12, 1996), July 17, 1997
- 8) Revised Pension Plan for Employees of Maplex General Insurance Company, 521278, (effective March 21, 1995), July 23, 1997



- 9) Standard Trustco Limited Designated Executive Employees' Retirement Plan, C-103419, (effective February 28, 1991), July 29, 1997
- 10) Pension Plan for Employees of Income Trust Company, 560235, (effective March 6, 1995), August 24, 1997
- 11) Imperial Oil Limited Retirement Plan (1988), C-8884 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., C-4280, (effective between February 4, 1992 and June 30, 1995 or the date the last member of the Plans employed by Imperial Oil at its IOCO refinery ceases employment, whichever is later, as a result of: (i) the discontinuance of all or part of the business of Imperial Oil; (ii) the discontinuance of all or a significant portion of the business carried on by Imperial Oil at one or more specific locations; or (iii) the reorganization of the business of Imperial Oil), September 4, 1997
- 12) Confederation Life Insurance Company Pension Plan for Canadian Salaried Employees, 0277541, (wound up in part in respect of those members and former members of the Plan who ceased to be employed by the Employers effective between July 1, 1993 and August 15, 1994), October 8, 1997
- 13) Confederation Life Insurance Company Pension Plan for Canadian Salaried Employees, 0277541, (effective October 7, 1994), October 8, 1997
- 14) Pension Plan for Hourly Rated Employees of John T. Hepburn, Limited Employed in the Plants of its Steel and Mechanical Divisions Located at St. Clair Avenue West, Toronto and Torbram Road, Mississauga in Ontario, Canada, 0592188, (effective July 6, 1994), October 27, 1997
- 15) Pension Plan for Wage Employees of Epton Industries Inc., 950923, (effective August 14, 1995), November 6, 1997
- 16) Retirement Plan for Salaried Employees of Epton Industries Inc., 932202, (effective August 14, 1995), November 6, 1997
- 17) Pension Plan for Salaried Employees of John T. Hepburn, Limited, 0598623, (effective July 6, 1994), November 6, 1997
- 18) The Pension Plan for the Staff of A.M.K. Investments Limited, 0997163, (effective February 29, 1996), November 4, 1997

## Appointments of Administrators - Section 71 of the PBA

The Superintendent appointed third party administrators pursuant to subsection 71(1) of the PBA to wind up the plan in whole or in part.

- 1) **Arthur Andersen Inc.** appointed as administrator of the Hudson Bay Diecasting Salaried Employees Retirement Income Plan, PN 0380170 effective January 17, 1996.
- 2) **Arthur Andersen Inc.** appointed as administrator of the Hudson Bay Diecasting Hourly Employees Retirement Income Plan, PN 0362178 effective January 17, 1996.
- 3) **Price Waterhouse Limited** appointed as administrator of the Agnew Group Inc. Employees Pension Plan, PN 0552802 effective February 6, 1996.
- 4) **Manufacturers Life Insurance Company** appointed as administrator of the Joybern Sales Inc. Pension Plan, PN 0340620 effective February 13, 1996.
- 5) **Arthur Andersen Inc.** appointed as administrator of the Dayton-Walther Canada, Ltd. Pension Plan for Hourly Employees, PN 0598866 effective February 19, 1996.
- 6) **Arthur Andersen Inc.** appointed as administrator of the Dayton-Walther Canada, Ltd. Employees Pension Plan, PN 0229377 effective February 20, 1996.
- 7) **Arthur Andersen Inc.** appointed as administrator of the Northern Globe Building Materials, Inc. Unionized Employees' Pension Plan, PN 0680413 effective May 29, 1996.
- 8) **Arthur Andersen Inc.** appointed as administrator of the Northern Globe Building Materials, Inc. Unionized Employees' Pension Plan, PN 0680405 effective May 29, 1996.
- 9) **Arthur Andersen Inc.** appointed as administrator of the Northern Globe Building Materials, Inc. Non-negotiated Employees' Pension Plan, PN 0680397 effective May 29, 1996.

- 10) **Equitable Life Insurance Company** appointed as administrator of the George Cluthe Manufacturing Company Ltd. Group Pension Plan, PN 0235069 effective May 30, 1996.
- 11) **Canada Life Assurance Company** appointed as administrator of the Brown & Collett Limited Pension Plan for Employees, PN 0224923 effective June 10, 1996.
- 12) **Price Waterhouse Limited** appointed as administrator of the S.I. Guttman Limited Executive Pension Plan, PN 0901082 effective June 17, 1996.
- 13) **London Life Insurance Company** appointed as administrator of the Marshall Paper Ltd. Employees Pension Plan, PN 0411850 effective June 26, 1996.
- 14) **Mutual Life of Canada** appointed as administrator of the Pride of Paris Fabrics Ltd. Pension Plan, PN 0385062 effective June 26, 1996.
- 15) **Standard Life** appointed as administrator of the W.G. Young Company Ltd. Employees Pension Plan, PN 0325290 effective July 10, 1996.
- 16) **Arthur Andersen Inc.** appointed as administrator of the Dayton-Walther Canada, Ltd. Pension Plan for Hourly Employees at the Guelph Plant, PN 0378547 effective July 10, 1996.
- 17) **Manufacturers Life Insurance Company** appointed as administrator of the Trenton Machine Tool Inc. Employees Pension Plan, PN 0589028 effective July 17, 1996.
- 18) **Manufacturers Life Insurance Company** appointed as administrator of the Tilden Corporation Employees Pension Plan, PN 0347583 effective November 6, 1996.
- 19) **Deloitte & Touche** appointed as administrator of the Brown & Collett Limited Designated Employees Pension Plan, PN 0586677 effective November 19, 1996.
- 20) **Price Waterhouse Limited** appointed as administrator of the AM International Inc. Hourly Employees Pension Plan, PN 0361998 effective December 6, 1996.
- 21) **Price Waterhouse Limited** appointed as administrator of the AM International Inc. Management Employees Pension Plan, PN 0361980 effective December 6, 1996.
- 22) **Price Waterhouse Limited** appointed as administrator of the AM International Inc. Pension Plan (1979), PN 0202044 effective December 6, 1996.
- 23) **Imperial Life** appointed as administrator of the Exothermic Company of Canada Ltd. Pension Plan for Union Employees, PN 0985770 effective December 13, 1996.
- 24) **Standard Life** appointed as administrator of the AMK Investments Ltd. Staff Pension Plan, PN 0997163 effective December 13, 1996.
- 25) **Price Waterhouse Limited** appointed as administrator of the Saracini Investments Limited Pension Plan for Salaried Employees Designated by Board of Directors, PN 0529339 effective February 13, 1997.
- 26) **Deloitte & Touche** appointed as administrator of the Excel Metalcraft Ltd. Pension Plan for Members of CAW Local 393, PN 0933515 effective March 20, 1997.
- 27) **Deloitte & Touche** appointed as administrator of the Zettel Metalcraft Ltd. Retirement Plan for Management Employees, PN 0536912 effective March 20, 1997.
- 28) **Deloitte & Touche** appointed as administrator of the Bakelite Thermosets Limited Non-Contributory Pension Plan, PN 0582668 effective March 20, 1997.
- 29) **Deloitte & Touche** appointed as administrator of the McNeil Pharmaceutical (Canada) Limited Retirement Plan for All Employees of Technicare Canada Division, PN 0019501 effective April 3, 1997.
- 30) **London Life Insurance Company** appointed as administrator of the Cody's Stores Limited Employees Pension Plan, PN 0401588 effective April 9, 1997.
- 31) **Manufacturers Life Insurance Company** appointed as administrator of the Stonetown Metal Products (1988) Ltd. Employees Pension Plan, PN 0679019 effective July 22, 1997.



- 32) **Deloitte & Touche** appointed as administrator of the Vulcan Packaging Inc. Executive Employees Pension Plan, PN 0977918 effective August 1, 1997.
- 33) **Deloitte & Touche** appointed as administrator of the Vulcan Packaging Inc. Staff Pension Plan for Hourly Paid Employees, PN 0379214 effective August 1, 1997.
- 34) **Deloitte & Touche** appointed as administrator of the Vulcan Packaging Inc. Salaried Employees Pension Plan, PN 0364323 effective August 1, 1997.
- 35) **Manufacturers Life Insurance Company** appointed as administrator of the 536098 Ontario Limited Employees Pension Plan, PN 0445619 effective August 1, 1997.
- 36) **Mutual Life of Canada** appointed as administrator of the Custom Windows Limited Employees Pension Plan, PN 0977413 effective September 5, 1997.
- 37) **Deloitte & Touche** appointed as administrator of the H-Can Industries Inc. Pension Plan for Employees, PN 0102159 effective September 11, 1997.
- 38) **Canada Life Assurance Company** appointed as administrator of the Listowel Transport Lines Limited Pension Plan for Non-Union Employees and Executives, PN 0389114 effective September 15, 1997.
- 39) **Canada Life Assurance Company** appointed as administrator of the Listowel Transport Lines Limited Pension Plan for Hourly Employees, PN 0566232 effective September 15, 1997.
- 40) **Crown Life** appointed as administrator of the Farmer Jack's Gardens Inc. Pension Plan for Employees, PN 0955088 effective September 15, 1997.
- 41) **London Life Insurance Company** appointed as administrator of the Georgian Industries Inc. Pension Plan for Employees, PN 0983999 effective September 15, 1997.
- 42) **London Life Insurance Company** appointed as administrator of the Rigid Box Company Limited Employees' Retirement Plan, PN 0579990 effective October 17, 1997.
- 43) **Manufacturers Life Insurance Company** appointed as administrator of the SDMS Communications Ltd. Pension Plan for Toronto Employees, PN 1000710 effective October 20, 1997.

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## Tribunal Activities

### Appointments and Re-appointments to the Commission

#### APPOINTMENTS OF PCO BOARD MEMBERS

Name and O.C.	Effective Appointment Date	Expiry Date
<b>Moore, C.S. (Kit), Chair</b> O.C. 621/97 O.C. 1354/94	March 24, 1997 (Head) June 8, 1994	March 23, 1998 June 7, 1997
<b>Bush, Kathryn M., Vice Chair</b> O.C. 904/97 O.C. 1332/96 O.C. 1459/93	May 14, 1997 (Deputy Head) June 17, 1996 June 17, 1993	June 16, 1999 June 16, 1999 June 16, 1996
<b>Beggs, Darcie L.</b> O.C. 2185/97 O.C. 3401/94 O.C. 2883/91	December 6, 1997 December 6, 1994 December 6, 1991	December 5, 1998 December 5, 1997 December 5, 1994
<b>Bharmal, Shiraz Y.M.</b> O.C. 1541/97 O.C. 2413/94	September 30, 1997 September 30, 1994	September 29, 2000 September 29, 1997
<b>Collins, Donald Gerard</b> O.C. 1149/97 O.C. 1458/93 O.C. 81/90 O.C. 376/87	June 11, 1997 June 2, 1993 March 1, 1990 March 1, 1987	June 10, 1998 June 1, 1996 February 28, 1993 February 28, 1990
<b>Greville, M. Elizabeth</b> O.C. 2405/95	February 8, 1996	February 7, 1999
<b>Robinson, Judy</b> O.C. 905/97	May 14, 1997	May 13, 2000
<b>Stephenson, Joyce Anne</b> O.C. 1930/95 O.C. 2617/92	October 28, 1995 October 28, 1992	October 27, 1998 October 27, 1995
<b>Wires, David E.</b> O.C. 257/97	February 27, 1997	February 26, 2000

## Hearings before the Commission

### **Pension Plan for Unionized Employees of Asea Brown Boveri Inc. Located at London, Burlington and St. Jean, 683433**

Request by Asea Brown Boveri Inc. ("ABB") for a hearing pursuant to section 89 of the Pension Benefits Act, with respect to a proposal dated July 10, 1996, of the Superintendent of Pensions to refuse to approve a wind up report filed by ABB. By letter dated September 4, 1996, Asea Brown Boveri Inc. requested that the dates of pre-hearing conference and hearing be postponed.

### **Babcock & Wilcox Industries Ltd. Salaried Employees Retirement Plan, 205690**

Request by counsel for certain former employees of Babcock & Wilcox Industries Ltd., Bailey Controls Division (the "Former Babcock Employees") for a hearing regarding the refusal of the Superintendent to register or to revoke two amendments to the Plan registered by the Superintendent on January 10, 1996. A pre-hearing conference held on December 19, 1996, was adjourned sine die.

### **City of Ottawa Superannuation Fund, C-006131**

Counsel for members of the City of Ottawa Superannuation Fund (COSF) requested a hearing regarding the Superintendent's approval of the registration of the amendment relating to early retirement benefits. Pre-hearing conferences were held on March 21, and November 27, 1996. Hearing dates were scheduled for April 29, 30, May 13 and 14, 1997. On April 22, 1997, the parties consented to an order dismissing the application for a hearing. The panel chair agreed to dismiss the hearing.

### **Clergy Retirement Pension Plan of the Diocese of Hamilton**

Request by The Roman Catholic Episcopal Corporation of the Diocese of Hamilton for a hearing regarding the Superintendent's Notice of Proposal to make an Order under section 87 of the Act respecting the Clergy Retirement Pension Plan of the Diocese of Hamilton, to order the Diocese of Hamilton to apply to the Superintendent of Pensions for registration of the Pension Plan. Pre-hearing conferences were held on May 1, 1997, September 24, 1997 and scheduled for February 27, 1998. Hearing dates are scheduled for April 20, 21, 22, 23 and 24, 1998.

### **The Pension Plan for the Employees of the Corporation of the City of Etobicoke, 312629**

An application by The Corporation of the City of Etobicoke to the Pension Commission of Ontario under subsections 78(1) and 79(3) of the Act and clause 8(1)(b) of the Regulation, R.R.O. 1990, Reg. 990, as amended, for the consent of the Commission to payment of surplus funds from the Pension Plan for Employees of the Corporation of the City of Etobicoke, Registration Number 0312629 was scheduled to be heard at the Commission meeting on September 18, 1997. Motions were heard from the Canadian Union of Public Employees, Local 185 and eight former members of the pension plan to adjourn the application before the Commission pending production of various documents by the City of Etobicoke. The Commission adjourned the hearing until October 4, 1997. The matter was heard by a panel on October 4, 1997. The Commission gave its consent to the application of The City of Etobicoke.

### **Confederation Life Insurance Canadian Salaried Pension Plan, 0277541**

Request by a group of Plan members, "Former Confed Employees Association" for a hearing in relation to the Superintendent's proposed wind up order dated July 15, 1996, proposing to order the wind up of the Plan in part effective between July 1, 1993 and August 15, 1994, and to order the wind up in whole effective October 7, 1994. The Commission deferred setting hearing dates to allow the Association to resolve outstanding issues. By letter dated September 12, 1997, the applicant withdrew the request for a hearing. The panel Chair agreed to dismiss the matter.

### **Confederation Life Insurance Canadian Salaried Pension Plan, 0277541**

Request by a former plan member for a hearing in relation to the Superintendent's proposed wind up order dated July 15, 1996, proposing to order the wind up of the Plan in part effective between July 1, 1993 and August 15, 1994, and to order the wind up in whole effective October 7, 1994. By letter dated October 7, 1996, this request for a hearing was formally withdrawn.

### **Confederation Life Insurance Field Representatives Plan, C-14329**

Request by a group of Plan members, "Former Confed Employees Association" for a hearing in relation to the Superintendent's proposed wind up order dated July 15, 1996, proposing to order the wind up of the Field Representatives Plan effective between October 31, 1993 and August 12, 1994. By letter dated December 20, 1996, this request for a hearing was formally withdrawn.



#### **IBEW, Local 303, Pension Trust Fund, 592428**

Four former members of the board of trustees of the IBEW, Local 303, Pension Plan requested that the Superintendent make an order that (a) the president of Local 303 or any member of its executive cease to interfere with the business and affairs of the Pension Plan and its pension fund; (b) there is no "just cause" under the plan agreement and trust for the removal of the four former members as trustees of the Plan; and, (c) that (along with the president and business manager of Local 303) the four former members constitute the Board of Trustees of the IBEW Local 303 Pension Trust Fund. In December 1995, the Superintendent refused to make the order requested and the four former trustees requested a hearing pursuant to section 89. A pre-hearing conference was held on May 9, 1996. By letter dated October 7, 1996, this request for a hearing was formally withdrawn.

#### **McDonnell Douglas Canada Ltd. Salaried Plan, 520593**

Request by an individual on behalf of a group of ex-McDonnell Douglas Employees, for a hearing with respect to an appeal of the Superintendent of Pensions' decision not to order a partial wind-up of the Plan. Pre-Hearing Conferences were held on July 23, 1997, and October 6, 1997. Hearing dates are scheduled for January 7, 8, February 18, 19, 23, 24 and 25, 1998.

#### **Molson Breweries Pension Plan for Toronto Brewery Workers (C-10945) (Fleet Street Plan) and Molson Breweries Pension Plan, (0334094 Etobicoke Plan)**

Request by the solicitors for the Canadian Union of Brewery and General Workers, Component 325, Local 325, for a hearing regarding the refusal of the Superintendent to make an order requiring the wind up of the Toronto Plan and the decision of the Superintendent regarding the combination of the two Plans and the transfer to the Etobicoke Plan. A Pre-Hearing Conference was held April 18, 1996. A hearing on preliminary motions was held on November 13 and 14, 1996. The decision on preliminary motions was released on January 10, 1997, (amended January 23, 1997). The Commission decided that the Union Local was not affected by the partial wind up and therefore did not have a right to request a hearing on that issue; the Commission would proceed with a section 90 hearing regarding the 1994 asset transfer; the Commission was without jurisdiction to consider the impact of alleged assurances made by Molson during the course of collective bargaining with Local 325; and, the Superintendent consider a 1990 asset transfer by Molson from the Toronto to the Etobicoke hourly plan. A pre-hearing conference was held on February 5, 1997 and the matter was adjourned sine die until the Superintendent makes a decision in relation to the 1990 transfer.

#### **Sheet Metal Workers' Local Unions and Councils Pension Plan (C-15249)**

Request for a hearing with respect to a decision of the Superintendent dated May 25, 1994 refusing to issue an order that the plan be administered in accordance with section 8(1)(e) and refusing to reject a plan amendment. A pre-hearing conference was held on September 8, 1994. A hearing date was set but adjourned sine die on consent.

A hearing was held on April 25, 1996, to determine whether the proceeding should be dismissed for delay. Upon consideration of the submissions of the parties, the Pension Commission of Ontario gave its decision that the matter be adjourned for a period of one year. In a letter dated December 6, 1996, the applicant withdrew this application.

#### **Pension Plan for Employees of the Sherwood Communications Group Limited and Its Subsidiary and Associated Companies, C-9860**

In June 1995, Sherwood submitted a report which wound up the plan effective May 31, 1991 and distributed all surplus to the plan beneficiaries. The Superintendent approved the report on February 15, 1996.

A former employee of the plan, who was not included in the surplus distribution, requested a hearing under ss. 88, 89 and 90 of the PBA asking the Commission (1) to set aside the Superintendent's approval of the wind up report; (2) to set aside a plan amendment (improving benefits) registered by the Commission on May 22, 1992, and (3) to order a partial wind up of the Sherwood plan over the period March 1986 to March 1989 or, alternatively to order a new wind up report with an effective date of March 1986 to March 1989. A pre-hearing was held on September 27, 1996. Hearing dates were scheduled for September 16 and 17, 1997. By letter dated, August 26, 1997, the applicant, Mr. West, withdrew his request for a hearing. The panel chair agreed to dismiss the hearing.

#### **Pension Plan for Employees Catholic Cemeteries Archdiocese of Toronto, 309278**

On February 13, 1997, the Superintendent declined to make an order as requested by the Labourers' International Union of North America, Local 506, to admit two seasonal employees as Plan members. Request for a hearing by Union on behalf of the two seasonal workers was received on March 14, 1997. The Unions seeks three orders: (a) that the Superintendent require the Archdiocese to admit the two seasonal employees as members, with service credits to their date of hire; (b) a declaration that the exclusion of seasonal employees from plan membership contravenes s.31(3) of the PBA; and (c) a declaration that the Superintendent violated the principles of natural justice, and the PBA and regulations, in failing to disclose to the Union and the seasonal employees copies of any submissions made by the Archdiocese in response to the Union's request for an order.

On February 12, 1997, the Union asked the Superintendent to reconsider his decisions regarding the order and disclosure the Union requested. The Union has asked the Commission to hold its hearing request in abeyance pending the Superintendent's response to this request.

**Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, 302851**

On February 11, 1997, the Canadian Union of Public Employees, Locals No. 1144 and 1590 ("CUPE") requested a section 89 hearing pursuant to the Superintendent's decisions dated January 13, 1997, with respect to the transfer of assets from the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, 302851, to the St. Joseph's Health Centre Pension Plan, the Providence Centre Pension Plan and the Morrow Park Plan. CUPE is asking for eight orders. Four of the orders are intended to prohibit the asset transfers. The other four orders seek: (a) declarations that the Plan and the new Plans constitute a multi-employer pension plan established pursuant to a collective agreement or trust agreement, and (b) orders that the Plan be administered by a board of trustees of whom at least half are member representatives. A pre-hearing conference was held on July 21, 1997. A hearing on jurisdictional issues is scheduled for January 27 and 28, 1998.

**Pension Plan for Employees of Zurich Canadian Holdings Limited, 0319517**

On August 23, 1996, a former member requested a hearing regarding the Superintendent's refusal to order a partial wind up of the pension plan. The former member claims that a partial wind up should be ordered on the grounds that a significant number of members ceased to be employed as a result of the reorganization of Zurich Canada. A pre-hearing conference was held on January 31, 1997. The hearing will be held in two stages. Hearing dates will be scheduled.

**Commission Decisions - Applications Approved Since September 1996**

**Surplus Withdrawal on Plan Wind Up Pursuant to a Surplus Sharing Agreement - Clause 8(1)(b) of Reg. 909 (as amended by O. Reg. 743/91) and s. 78(1) and 79(3) of the Act**

Most of the following Commission decisions consenting to payment of surplus were made subject to the applicant satisfying the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held October 24, 1996, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) The Pension Plan for Employees of H & S Reliance Limited, 545699**

Payment of surplus to H & S Reliance Limited, from The Pension Plan for Employees of H & S Reliance Limited, 545699, in the amount of 100% of the surplus in the plan (\$59,565 as at February 1, 1988) plus investment earnings thereon to the date of payment less adjustments for expenses.

**(b) Lawrence A. Brenzel Limited Designated Employees' Pension Plan 403758**

Payment of surplus to Lawrence A. Brenzel Limited from the Lawrence A. Brenzel Limited Designated Employees' Pension Plan, Registration Number 403758, in the amount of 100% of the surplus in the Plan (\$1,633,500 as at April 30, 1995) plus investment earnings thereon to the date of payment and any other adjustments such as expenses.

**(c) Pension Plan for Canadian Employees of Kennametal Ltd. and Affiliated Companies, 343087**

Payment of surplus to Kennametal Ltd., from the Pension Plan for Canadian Employees of Kennametal Ltd. and Affiliated Companies, Registration Number 343087, in the amount of 33 1/3% of the surplus in the plan (approximately \$770,712 as at December 31, 1991), plus investment earnings thereon to the date of payment.

**(d) The Maher Inc. Retirement Plan, 546663**

Payment of surplus to Ernst & Young Inc., Receiver and Manager of Maher Inc., from The Maher Inc. Retirement Plan, 546663, in an amount which is 50% of \$2,030,491 as at April 29, 1992 plus 50% of all investment gains (net of all investment losses) thereon from the wind-up date to the date of distribution of same in accordance with the Surplus Sharing Agreement, minus

- (i) 50% of all costs and expenses incurred by the Receiver, Administrator, and the members and former members of the Pension Plan represented by Koskie Minsky in connection with the administration and wind-up of the Plan and the negotiation and implementation of the Surplus Sharing Agreement, including, without limitation, all administrative, legal and actuarial fees and expenses;
- (ii) 50% of the amount of any contingency reserve which may be approved by the Commission.

and as adjusted to reflect:

- (a) the payment of interest on commuted values calculated as at the wind-up date for the period from the wind-up date to the date of distribution as provided for in the wind-up report;
- (b) any adjustments to the estimated cost to purchase annuities for those pensioners-in-pay as at the wind-up date and those members and former members who elected to receive a monthly pension; and
- (c) any adjustments to the asset and/or liabilities arising after the filing of the wind-up report.

**(e) Pension Plan for Senior Executive Employees of Custom Plastics International Limited, 410316**

Payment of surplus to Custom Plastics International Limited, from the Pension Plan for Senior Executive Employees of Custom Plastics International Limited, 410316, in the amount of 100% of the surplus in the Plan (\$46,000 as at January 1, 1993) plus investment earnings thereon to the date of payment.

**(f) Pension Plan for Unionized Salaried Employees of ESSROC Canada Inc., 487223**

Payment of surplus to ESSROC Canada Inc., from the Pension Plan for Unionized Salaried Employees of ESSROC Canada Inc., Registration Number 487223, in the amount of the lesser of:

- (a) 50% of the Surplus (as defined below); and
- (b) such percentage of the Surplus remaining after the members and former members of the Plan have been provided with an increase in benefits that is equal to the increase in benefits provided to members and former members of the Pension Plan for Salaried Employees of ESSROC Canada Inc. (the "Salaried Plan") pursuant to the surplus sharing arrangement proposed by the Applicant in respect of the Salaried Plan.

Surplus shall mean: \$133,489 (the amount of surplus in the Plan as at August 31, 1995); plus investment earnings thereon to the date of payment; and minus (i) the legal fees and disbursements incurred by the Applicant and (ii) all other costs and expenses related to the continuing administration and wind-up of the Plan.

**(g) Deb Swarfega Inc. Pension Plan, 454041**

Payment of surplus to Deb Canadian Hygiene Inc., from the Deb Swarfega Inc. Pension Plan, Registration Number 454041, in the amount of 100% of the surplus in the Plan (\$6,146 as at December 31, 1991) plus investment earnings thereon to the date of payment.



**(h) The Revised Pension Plan For Employees of Dunham-Bush of Canada Limited And Its Subsidiary And Associated Companies, 245787**

Payment of surplus to Dunham-Bush of Canada Limited, from The Revised Pension Plan For Employees of Dunham-Bush of Canada Limited And Its Subsidiary And Associated Companies, Registration Number 245787, in the amount of 50% of the surplus in the Plan (approximately \$27,894 as at December 31, 1993) plus investment earnings thereon to the date of payment.

At the Commission meeting held November 21, 1996, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Anchor Cap & Closure Salaried Employees Pension Plan, 15798**

Payment of surplus to Newell Industries Canada Inc., from the Anchor Cap & Closure Salaried Retirement Plan, Registration Number 215798, in the amount of 50% of the surplus in the plan (approximately \$1,369,190 as at December 31, 1992) plus 50% of investment earnings thereon to the date of payment and minus:

- (i) 50% of the legal fees and disbursements incurred by the Applicant and by the members and former members of the Plan represented by Koskie Minsky, to the date of segregation (the "Segregation Date") of the surplus into the Applicant's and members' portions within the existing trust (which date will be established by agreement of the parties to the Surplus Agreement, as defined in paragraph 17 of the Application, following the Commission's hearing of this Application);
- (ii) 50% of all other costs and expenses related to the continuing administration and wind-up of the Plan incurred to the Segregation Date;
- iii) 100% of the Applicant's legal fees and disbursements incurred on and after the Segregation Date; and
- (iv) 50% of all other costs and expenses related to the continuing administration and wind-up of the Plan (other than legal fees and disbursements) incurred on and after the Segregation Date.

**(b) Pension Plan for Senior Employees of Pollard Windows Inc., 975912,**

Payment of surplus to Pollard Windows Inc., from the Pension Plan for Senior Employees of Pollard Windows Inc., 975912, in the amount of 100% of the surplus in the plan (\$6,774 as at July 31, 1994) plus investment earnings thereon to the date of payment.

**(c) Revised Pension Plan for the Employees of SKF Steel Limited, 0288944**

Payment of surplus to SKF Steel Limited, from the Revised Pension Plan for the Employees of SKF Steel Limited, 0288944, in the amount of 50% of the surplus in the plan (approximately \$115,698.50 as at March 31, 1988) plus 50% of investment earnings thereon to the date of payment and less 50% of expenses incurred.

In consenting, the Commission was satisfied that the wind-up of the pension plan resulted from the closure of the business and was effectively a full wind-up conducted in two stages. On this basis, more than two-thirds of the active members had consented to the surplus sharing agreement.

**(d) Pension Plan for Employees of C.D. Mackay Limited, 411587**

Payment of surplus to C.D. Mackay Limited, from the Pension Plan for the Employees of C.D. Mackay Limited, 411587, in the amount of 100% of the surplus in the plan (\$474,536.64 as at January 1, 1993) plus investment earnings thereon to the date of payment.

At the Commission meeting held December 12, 1996, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Executive Employees of Bravo Cement Developments Limited, 422808**

Payment of surplus to Bravo Cement Development Limited, from the Pension Plan for Executive Employees of Bravo Cement Developments Limited, Registration Number 422808, in the amount of 100% of the surplus in the plan (\$687,366 as at November 30, 1995) plus investment earnings thereon to the date of payment and less any expenses associated with the wind up and surplus application.

**(b) Pension Plan for Employees of Brantford Packers Limited, Registration Number 556381**

Payment of surplus to Brantford Packers Limited, from the Pension Plan for Employees of Brantford Packers Limited, Registration Number 556381, in the amount of 71.7% of the surplus in the plan (approximately \$512,923 as at April 30, 1996) plus investment earnings thereon to the date of payment and less any expenses.

**(c) Contributory Pension Plan for Employees of Marubeni Canada Ltd., 363499**

Payment of surplus to Marubeni Canada Ltd., from the Contributory Pension Plan for Employees of Marubeni Canada Ltd., Registration Number 363499, in the amount of 45% of the surplus in the plan (\$104,085 as at December 31, 1995) plus investment earnings thereon to the date of payment, less all related expenses.

**(d) Non-Contributory Pension Plan for Employees of Marubeni Canada Ltd., 363580**

Payment of surplus to Marubeni Canada Ltd., from the Non-Contributory Pension Plan for Employees of Marubeni Canada Ltd., Registration Number 363580, in the amount of 50% of the surplus in the plan (\$86,400 as at December 31, 1995) plus investment earnings thereon to the date of payment, less all related expenses.

**(e) The Bell Technical Services Inc. Retirement Plan for Salaried Employees, 937383**

Payment of surplus to Coopers & Lybrand Limited, as Agent of Royal Bank of Canada, a secured creditor of Servis Integrated Systems Corporation (the "Agent"), from The Bell Technical Services Inc. Retirement Plan for Salaried Employees, Registration Number 937383, in the amount of 50% of the surplus in the plan (\$1,933,000 as at November 4, 1991) as determined in accordance with the Surplus Sharing Agreement entered into between the Agent and members and former members of the Pension Plan; such payment to be made in accordance with the said Surplus Sharing Agreement. The Commission further consents to the making of all payments required to be made by the terms of the Surplus Sharing Agreement.

**(f) Howden Group Canada Ltd. Salaried Employees Pension Plan, Registration Number 338087; Designated Management Pension Plan, Registration Number 368704; and Senior Management Pension Plan, Registration Number 368712**

Payment of surplus to Howden Group Canada Ltd., from the Salaried Employees Pension Plan, Registration Number 338087; the Designated Management Pension Plan, Registration Number 368704; and Senior Management Pension Plan, Registration Number 368712, in the amount of \$2,620,877 as at December 22, 1995, plus investment earnings thereon, less expenses, to the date of payment.

In consenting, the Commission was satisfied that there was no trust agreement, there was no intention to create a trust over the past 40 years and no evidence that a trust has been created. The word "irrevocable" is not relevant since no trust was created. The Commission relied on its decision in the Ferro case (December 19, 1995) that annuitants do not meet the definition of "former members" and therefore are not properly included as part of the consent group. And, finally, the Commission was satisfied that informed consents were obtained as plan members were provided with all relevant material and were advised that they could seek legal counsel or choose not to do so.

At the Commission meeting held December 12, 1996, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission denied consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Leonard Technical Service Limited Employees Pension Plan, 521013**

Denied Commission consent to payment of surplus to Leonard Technical Service Limited, from the Leonard Technical Service Limited Employees Pension Plan, Registration Number 521013, in the amount of 80% of the surplus in the plan (approximately \$137,546 as at March 3, 1995).

The reasons for the decision are as indicated below:

The Commission is not satisfied that the notice requirements of clause 78(2)(a) of the Act and subsection 28(5) of the Regulations have been met. The Commission cannot rely on the consents unless it is satisfied that the notice fully disclosed all relevant information.

If the applicant wishes to make a new application in this matter, it must satisfy the Commission that all requirements of the legislation have been met.

At the Commission meeting held January 23, 1997, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Dominion Textile Inc. Staff Retirement Income Plan for Employees at Locations Situated in a Province Other than Quebec, Registration Number 1012236**

Payment of surplus to Dominion Textile Inc., from the Dominion Textile Inc. Staff Retirement Income Plan for Employees at Locations Situated in a Province Other than Quebec, Registration Number 1012236, in the amount of 50% of the surplus in the plan (approximately \$5,606,000 as at December 31, 1995) plus investment earnings thereon to the date of payment and less any expenses.

**(b) Pension Plan for Employees of GLC Publishers Limited, 0394890**

Payment of surplus to Ginn Publishing Canada Inc., from the Pension Plan for Employees of GLC Publishers Limited, Registration Number 0394890, in the amount of 50% of the surplus in the plan (approximately \$70,100 as at December 31, 1990) plus investment earnings thereon to the date of payment and less expenses.

At the Commission meeting held February 27, 1997, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Fasson Canada Inc. Pension Plan, Registration Number 266791**

Payment of surplus to the Applicant, Fasson Canada Inc., from the Fasson Canada Inc. Pension Plan, Registration Number 266791, in the amount of 54.9% of the surplus in the plan (approximately \$66,003.07 as at January 1, 1996) plus investment earnings thereon to the date of payment.

**(b) Pension Plan for Employees of Crane National Vendors Canada, Registration Number 386011**

Payment of surplus to the Applicant, Crane National Vendors Canada, from the Pension Plan for Employees of Crane National Vendors Canada, Registration Number 386011, in the amount of 60% of the surplus in the plan (approximately \$353,458.80 as at September 30, 1995) plus investment earnings thereon to the date of payment and less any proper expenses.

**(c) The Pension Plan for the Salaried Employees of A.M.I. Steego Limited, Registration Number 214387**

Payment of surplus to the Applicant, McKerlie - Millen Inc., from The Pension Plan for the Salaried Employees of A.M.I. Steego Limited, Registration Number 214387, in the amount of 50% of the surplus in the plan (approximately \$17,500 as at October 1, 1987) plus investment earnings thereon to the date of payment and less any proper expenses.

**(d) Baffin Trading Company Limited Pension Plan, Registration Number 224709**

Payment of surplus to the Applicant, Baffin Trading Company Limited, from the Baffin Trading Company Limited Pension Plan, Registration Number 224709, in the amount of 50% of the surplus in the plan (approximately \$836,078.50 as at September 30, 1984) plus investment earnings thereon to the date of payment and less 50% of the proper expenses incurred to wind up the Plan and to implement the Surplus Sharing Agreement.

This consent shall not be effective until the Applicant files a satisfactory trust arrangement, acceptable to the Pension Commission of Ontario, for those former members entitled to benefits who cannot be located by the Applicant.

**(e) Pension Plan for Employees of Hiway Market Limited, Registration Number 571554**

Payment of surplus to the Applicant, Hiway Market Limited, from the Pension Plan for Employees of Hiway Market Limited, Registration Number 571554, in the amount of \$419,650 as at May 30, 1987 plus investment earnings thereon to the date of payment and less proper expenses up to \$25,000.



**(f) Retirement Plan for Employees of Lau Division - Philips Air Distribution Limited, Registration Number 0267112**

Payment of surplus to the Applicant, ASL (Tomkins) Limited, from the Retirement Plan for Employees of Lau Division - Philips Air Distribution Limited, Registration Number 0267112, in the amount of 60% of the surplus in the plan (approximately \$411,783 as at April 1, 1993) plus investment earnings or losses and proper expenses thereon to the date of payment.

At the Commission meeting held March 27, 1997, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Executive Pension Plan of Rogol Electric Company Limited, Registration Number 974238**

Payment of surplus to Rogol Electric Company Limited, from the Executive Pension Plan of Rogol Electric Company Limited, Registration Number 974238, in the amount of 100% of the surplus in the plan (\$67,172 as at January 1, 1994) plus investment earnings thereon to the date of payment.

**(b) Pension Plan for Salaried Employees of Westcode Incorporated, Registration Number 579326**

Payment of surplus to Westcode Incorporated, from the Pension Plan for Salaried Employees of Westcode Incorporated, Registration Number 579326, in the amount of 100% of the surplus in the plan (\$76,343 as at December 31, 1994) plus investment earnings thereon to the date of payment and adjusted for proper expenses.

At the Commission meeting held April 24, 1997, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Executive Employees of Bennett & Wright (Eastern) Limited, Registration Number 400150**

Payment of surplus to Bennett & Wright Limited, the successor to Bennett & Wright (Eastern) Limited, from the Pension Plan for Executive Employees of Bennett & Wright (Eastern) Limited, Registration Number 400150, in the amount of 100% of the surplus in the plan (\$142,636 as at December 31, 1988) plus investment earnings thereon to the date of payment and less all proper expenses associated with the wind up and surplus application.

**(b) Pension Plan of MacLaren:Lintas Inc. for Susan Lenard, Registration Number 980821**

Payment of surplus to MacLaren McCann Canada Inc., from the Pension Plan of MacLaren:Lintas Inc. For Susan Lenard, Registration Number 980821, in the amount of 50% of the surplus in the plan (approximately \$17,250 as at January 31, 1993) plus investment earnings thereon to the date of payment.

**(c) Wackid Radio Television Laboratories Limited Pension Plan, Registration Number 563999**

Payment of surplus to Wackid Radio, from the Wackid Radio Television Laboratories Limited Pension Plan, Registration Number 563999, in the amount of 100% of the surplus in the plan (\$345,689 as at March 31, 1996) plus investment earnings thereon to the date of payment minus legal fees and proper expenses.

**(d) Pension Plan for Executives of the Canadian Football League, Registration Number 563890**

Payment of surplus to the Canadian Football League, from the Pension Plan for Executives of the Canadian Football League, Registration Number 563890, in the amount of 100% of the surplus in the plan (\$38,440 as at December 31, 1995) as adjusted for any investment earnings or losses and reasonable expenses incurred thereon to the date of payment.

In consenting, the Commission relied on the statement in the Wind-Up Report as at December 31, 1989, prepared by Steven M. Lipkowski, F.S.A., F.C.I.A. of Mutual Life of Canada that, "The surplus is wholly attributable to employer contributions since it has accumulated due to refunds of employer contributions plus interest occurring on termination of non-vested members."

**(e) National System of Baking Limited Executive Employees Pension Plan, Registration Number 413559**

Payment of surplus to National System of Baking Limited, from the National System of Baking Limited Executive Employees Pension Plan, Registration Number 413559, in the amount of approximately 50% of the surplus in the plan (\$251,681 as at December 31, 1995) plus investment earnings thereon to the date of payment and adjusted for any difference between actual and expected expenses in respect of the processing of this application.

**(f) TRW Canada Limited Transportation Electronics Division Pension Plan for Members of Local 520 of the United Electrical, Radio and Machine Workers of Canada, Registration Number 355412**

Payment of surplus to TRW Canada Limited, from the TRW Canada Limited Transportation Electronics Division Pension Plan for Members of Local 520 of the United Electrical, Radio and Machine Workers of Canada, Registration Number 355412, in the amount of \$253,635 as at October 15, 1993 plus investment earnings thereon to the date of payment less 56% of Costs as defined in paragraph 5 of the Application.

At the Commission meeting held May 22, 1997, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan of Scott's Hospitality Inc. for Bruce R. Dodds, Registration Number 978973**

Payment of surplus to Laidlaw Inc., from the Pension Plan of Scott's Hospitality Inc. For Bruce R. Dodds, Registration Number 978973, in the amount of \$425,800 as at January 31, 1997 plus investment earnings thereon to the date of payment, with adjustments for expenses associated with the surplus application, and less \$100,000 payable to the surviving spouse of the sole member pursuant to a surplus sharing agreement.

At the Commission meeting held June 26, 1997, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Employees of Revenue Properties Company Limited - the "Basic Plan", Registration Number 548198**

Payment of surplus to Revenue Properties Company Limited, from the Pension Plan for Employees of Revenue Properties Company Limited - the "Basic Plan", Registration Number 548198, in the amount of 48% of the surplus in the plan (approximately \$259,462 as at December 31, 1990) plus investment earnings thereon to the date of payment and adjusted for reasonable expenses of the application.

**(b) The Borden Company, Limited Employees Retirement Income Plan, Registration Number 301804**

Payment of surplus to The Borden Company, Limited, from The Borden Company, Limited, Employees Retirement Income Plan, Registration Number 301804, in the amount of 25% of the plan's surplus attributable to the Lancia-Bravo partial wind-up (approximately \$479,432 as at February 28, 1997) plus investment earnings thereon to the date of payment, less reasonable expenses of the application.

At the Commission meeting held July 31, 1997, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Significant Shareholder Employees of Ben Herberman Insurance Agency Limited, Registration Number 412635**

Payment of surplus to Ben Herberman Insurance Agency Limited, from the Pension Plan for Significant Shareholder Employees of Ben Herberman Insurance Agency Limited, Registration Number 412635, in the amount of 100% of the surplus in the plan (\$113,986 as at December 1, 1994) plus investment earnings thereon to the date of payment and less a provision for final settlement fees.

**(b) Pension Plan for Employees of Hedwyn Communications Inc., 593541**

Payment of surplus to Hedwyn Communications Inc., from the Pension Plan for Employees of Hedwyn Communications Inc., Registration Number 593541, in the amount of 50% of the surplus in the plan (approximately \$339,337.50 as at March 1, 1990) subject to adjustments as described on page 2 of the application.

**(c) The Buff-Mar Cartage Limited Pension Plan, Registration Number 999276**

Payment of surplus to Buff-Mar Cartage Ltd., from The Buff-Mar Cartage Limited Pension Plan, Registration Number 999276, in the amount of \$62,827 as at December 1, 1991 plus investment earnings thereon to the date of payment.

**(d) Retirement Plan for Salaried Employees of Rockwell International of Canada Ltd. (Collins Canada Division), Registration Number 260398**

Payment of surplus to Rockwell International of Canada Ltd. from the Retirement Plan for Salaried Employees of Rockwell International of Canada Ltd. (Collins Canada Division), Registration Number 260398, in the amount of \$1,715,648 (\$5,565,648 - \$3,850,000) as at March 31, 1991, plus all investment earnings under the Plan from March 31, 1991 to the date of payment, less the legal, actuarial, administrative and other costs and payments outlined in paragraphs (c), (d), (e) and (f) of section 4 of the application.

**(e) Pension Plan (1966) for Salaried Employees of Westeel, a Division of Jannock Steel Fabricating Company, Registration Number 520478**

Payment of surplus to Jenisys Engineered Products from the Pension Plan (1966) for Salaried Employees of Westeel, a Division of Jannock Steel Fabricating Company, Registration Number 520478, in the amount of 60% of the surplus in the Plan (approximately \$23,826,091 as at February 1, 1997), plus investment earnings thereon and other adjustments as described in the Surplus Sharing Agreement, to the date of payment.

The Commission consented to the course of action proposed by the Applicant, Jenisys Engineered Products, set out in Mr. Anthony Devir's letter of September 22, 1997, whereby the entitlement for the estate of an individual will be paid to the Company. The Company will continue its efforts to locate the estate of this individual and will pay the deceased's surplus entitlement, together with interest to the estate of the person if the legal representative of the estate comes forward. Interest will be calculated using CANSIM Series B 14045 tables.

**(f) The Salant Canada Limited Retirement Plan, commonly known as the Pension Plan for Employees of Buckeye Industries, A Division of T.A.G. Apparel Group Inc., Registration Number C-14278**

Payment of surplus to KPMG Inc. (the Receiver) from The Salant Canada Limited Retirement Plan, commonly known as the Pension Plan for Employees of Buckeye Industries, A Division of T.A.G. Apparel Group Inc., Registration Number C-14278, in the amount of \$227,363 as at February 29, 1996, adjusted for investment earnings thereon to the date of payment and other factors as described on page 1 of the application.

At the Commission meeting held August 21, 1997, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Employees of Barnes Wines Ltd., Registration Number 0477091**

Payment of surplus to 3273 Ontario Limited, from the Pension Plan for Employees of Barnes Wines Ltd., Registration Number 0477091, in the amount equal to 64.6% of the surplus of \$130,176 as at August 19, 1988 plus 64.6% of investment earnings thereon to the date of payment and less 64.6% of expenses relating to the wind-up.

**(b) Non-Contributory Pension Plan for Employees of Orenda Division and the Merchandising Equipment Division of Hawker Siddeley Canada Inc., 344176**

Payment of surplus to Hawker Siddeley Canada Inc., from the Non-Contributory Pension Plan for Employees of Orenda Division and the Merchandising Equipment Division of Hawker Siddeley Canada Inc., Registration Number 344176, in the amount of 50% of \$9,388,217 as at May 31, 1996 plus 50% of all gains (net of losses) minus 50% of all fees, costs, disbursements and expenses, as detailed on page 2, paragraph IV of the Application, to the date of payment.



**(c) Pension Plan for Designated Employees of J.V. McDonnell Electrical Construction Company Limited, Registration Number 459354**

Payment of surplus to J.V. McDonnell Electrical Construction Company Limited, from the Pension Plan for Designated Employees of J.V. McDonnell Electrical Construction Company Limited, Registration Number 459354, in the amount of \$224,108.90 as at December 31, 1996 plus investment earnings thereon to the date of payment.

At the Commission meeting held September 18, 1997, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Retirement Plan for Employees of Electro Porcelain Co. Ltd., Registration Number 584813**

Payment of surplus to Electro Porcelain Co. Ltd., from the Retirement Plan for Employees of Electro Porcelain Co. Ltd., Registration Number 584813, in the amount of 50% of the surplus in the plan (approximately \$191,207.00 as at February 1, 1997) plus investment earnings thereon to the date of payment and less any additional expenses incurred in obtaining the surplus refund.

**(b) The Pension Plan for Non-Bargaining Unit Salaried Employees of Pullman Power Products of Canada Limited, 420703**

Payment of surplus to Pullman Power Products of Canada Limited, from The Pension Plan for Non-Bargaining Unit Salaried Employees of Pullman Power Products of Canada Limited, Registration Number 420703, in the amount of \$77,565 as at September 30, 1989, plus investment earnings thereon to the date of payment, and less \$16,000 payable to the beneficiaries pursuant to a Surplus Distribution Agreement and less administration and other expenses incurred by the Applicant.

**(c) Pension Plan for Employees of Marson Canada Inc., Registration Number 391094**

Payment of surplus to Marson Canada Inc., from the Pension Plan for Employees of Marson Canada Inc., Registration Number 391094, in the amount of 82.5% of the surplus in the plan (approximately \$568,031.94 as at December 31, 1996) plus investment earnings thereon to the date of payment, less any permitted expenses.

**(d) First Brands Holdings Corporation Non-Contributory Pension Plan, Registration Number 966390**

Payment of surplus to First Brands (Canada) Corporation, from the First Brands Holdings Corporation Non-Contributory Pension Plan, Registration Number 966390, in the amount of 50% of the surplus in the plan (approximately \$2,481,884 as at December 31, 1994) plus investment earnings thereon to the date of payment, less any required adjustments.

This consent is subject to the undertaking of the applicant to pay, from its share of the surplus, compensation to any members whose surplus allocations are adversely affected by the amendment to the plan passed by a Resolution of the Directors of First Brands Holdings Corporation and dated December 20, 1996.

**(e) Pension Plan "A" for Employees of Mississauga Golf and Country Club, Registration Number 690016**

Payment of surplus to Mississauga Golf and Country Club, Limited, from the Pension Plan "A" for Employees of Mississauga Golf and Country Club, Limited, Registration Number 690016, in the amount of 100% of the surplus in the plan (approximately \$26,562.81 as at June 4, 1997) plus investment earnings thereon to the date of payment.

At the Commission meeting held October 23, 1997, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Eaton Retirement Annuity Plan, Registration Number 337238**

Subject to certain conditions, pursuant to subsections 78(1) and 79 of the Pension Benefits Act, R.S.O. 1990, c. P.8 and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended, to the payment of surplus to Eaton's from the Eaton Retirement Annuity Plan (AERAP@) in the amount of the ACompany's Surplus Share@ as defined in the Application, which is estimated in the Certification to be \$136,940,000 as at October 20, 1997.

Eaton's requested that the Company's Surplus Share be paid to Eaton's in two parts: first, by the payment to Eaton's of an initial payment from the Company's Surplus Share, as defined in the Application and which is estimated in the Certification to be \$134,000,000 as at October 20, 1997 (the "Initial Payment"); and second, by payment to Eaton's of the balance of the Company's Surplus Share (the "Subsequent Payment").

The Commission's consent is given in two parts: first, its consent to the payment of the Initial Payment; and second, its consent to payment of the Subsequent Payment. Neither part of the Commission's consent shall become effective until certain conditions are satisfied.

The first part of the Commission's consent shall not become effective until Eaton's demonstrates to the satisfaction of the Commission that: (i) its plan under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as approved by the Ontario Court (General Division) on September 12, 1997, is being implemented; (ii) it has provided to the Commission fully executed documents which are substantially the same as those contained in Eaton's Supplementary Submission dated October 21, 1997 and listed in Appendix A to the Minutes; and, (iii) prior to any portion of the Initial Payment being paid out of the plan fund to Eaton's, Eaton's will fully repay its promissory note, with interest to the date of repayment, which is held in the ERAP trust fund in respect of the "Health Premium Adjustment", as described in the Application and the Certification. As a result of this repayment of the promissory note within ERAP, the net Initial Payment being paid out of the plan fund to Eaton's is estimated in the Certification to be \$126,371,000 as at October 20, 1997 (ie. the Initial Payment of \$134,000,000, less the value of the promissory note, estimated in the Certification to be \$7,629,000 as at October 20, 1997).

The second part of the Commission's consent shall not become effective until Eaton's demonstrates to the satisfaction of the Commission that the balance of the Company's Surplus Share is no longer required to be kept as a reserve to deal with any contingency that might arise in relation to the distribution of basic benefits payable on the wind up of ERAP or which might affect the size of the Members' Surplus Share (as set out in the Application).

**(b) Eaton Superannuation Plan for Designated Employees, Registration Number 593673**

Subject to certain conditions, pursuant to subsections 78(1) and 79 of the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "Act") and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended (the "Regulation"), and pursuant to subsections 78(1) and 79 of the Act and section 10 of the Regulation, to the payment of surplus to Eaton's from the Eaton Superannuation Plan for Designated Employees ("ESP") in the amount of the "Company's Surplus Share" as defined in the Application, which is estimated in the Certification to be \$48,161,525 as at October 21, 1997.

The Company's Surplus Share is comprised of surplus relating to the partial wind-up of ESP, estimated in the Certification to be \$34,195,815 as at October 21, 1997, plus surplus relating to the ongoing portion of ESP, estimated in the Certification to be \$13,965,710 as at October 21, 1997.

Eaton's requested that the Company's Surplus Share be paid to Eaton's in two parts: first, by the payment to Eaton's of an initial payment from the Company's Surplus Share, as defined in the Application and which is estimated in the Certification to be \$47,161,525 as at October 21, 1997 (the "Initial Payment"); and second, by payment to Eaton's of the balance of the Company's Surplus Share (the "Subsequent Payment").

The Initial Payment of \$47,161,525 is comprised of surplus relating to the partial wind-up of ESP, estimated in the Certification to be \$33,695,815 as at October 21, 1997, plus surplus relating to the ongoing portion of ESP, estimated in the Certification to be \$13,465,710 as at October 21, 1997.

The Commission's consent is given in two parts: first, its consent to payment of the Initial Payment; and second, its consent to payment of the Subsequent Payment. Neither part of the Commission's consent shall become effective until certain conditions are satisfied.

The first part of the Commission's consent shall not become effective until Eaton's demonstrates to the satisfaction of the Commission that: (i) its plan under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as approved by the Ontario Court (General Division) on September 12, 1997, is being implemented; (ii) it has provided to the Commission fully executed documents which are substantially the same as those contained in Eaton's Supplementary Submission dated October 20, 1997 and listed in Appendix B to the Minutes; and (iii) prior to any portion of the Initial Payment being paid out of the plan fund to Eaton's, Eaton's will fully repay its promissory note, with interest to the date of repayment, which is held in the ESP trust fund in respect of the "Health Premium Adjustment", as described in the Application and the Certification. As a result of this repayment of the promissory note within ESP, the net Initial Payment to Eaton's out of ESP is estimated in the Certification to be \$47,127,525 as at October 21, 1997 (ie. the Initial Payment of \$47,161,525, less the value of the promissory note, estimated in the Certification to be \$34,000 as at October 21, 1997).

The second part of the Commission's consent shall not become effective until Eaton's demonstrates to the satisfaction of the Commission that the balance of the Company's Surplus Share is no longer required to be kept as a reserve to deal with any contingency that might arise in relation to the distribution of basic benefits payable on the partial wind up of ESP or which might affect the size of the Members' Surplus Share (as set out in the Application).

**(c) Pension Plan for Employees of ANTEC Canada, Branch of ANTEC Corporation, 1016856**

Payment of surplus to ANTEC Corporation, from the Pension Plan for Employees of ANTEC Canada, Branch of ANTEC Corporation, Registration Number 1016856, in the amount of 50% of the surplus in the plan (approximately \$42,800 as at July 31, 1997), plus investment earnings thereon to the date of payment and adjusted for expenses.

**(d) Pension Plan for Field Construction and Certain Other Hourly-Rated Employees at Designated Units of Horton CBI, Limited, Registration Number 355081**

Payment of surplus to Horton CBI, Limited, from The Pension Plan for Field Construction and Certain Other Hourly-Rated Employees at Designated Units of Horton CBI, Limited, Registration Number 355081, in the amount of \$4,222,000 as at October 1, 1996, plus investment earnings thereon and less all costs and expenses to the date of payment.

**(e) Interior Wall Systems Limited Pension Plan for J.D. Younder, Registration Number 973743**

Payment of surplus to Interior Wall Systems Limited, from the Interior Wall Systems Limited Pension Plan for J.D. Younder, Registration Number 973743, in the amount of 100% of the surplus in the plan (approximately \$103,157 as at January 1, 1996) plus investment earnings thereon to the date of payment and less any additional related expenses.

**(f) Dover Corporation (Canada) Limited Pension Plan for Salaried Employees, Registration Number 245480**

Payment of surplus to Dover Corporation (Canada) Limited, from the Dover Corporation (Canada) Limited Pension Plan for Salaried Employees, Registration Number 245480, in the amount of 50% of the surplus in the plan (approximately \$91,250 as at June 30, 1992) plus investment earnings thereon and adjusted for expenses to the date of distribution.

**(g) The Retirement Plan for Employees of Inmet Mining Corporation, Registration Number 952663**

Payment of surplus to Lurgi Canada Ltd., from The Retirement Plan for Employees of Inmet Mining Corporation, Registration Number 0952663, in the amount of 50% of the surplus in the plan (approximately \$52,500 as at June 30, 1996) plus investment earnings thereon to the date of payment less any additional expenses incurred in obtaining the surplus refund.

The Commission noted that it was relying upon the statements of the applicant's consultant (i) that the plan assets of Lurgi Canada Ltd. have always been held in a separate account, and (ii) that the balance of the plan assets are presently in a significant surplus position.



**(h) Leonard Technical Service Limited Employees Pension Plan, Registration Number 521013**

Payment of surplus to Leonard Technical Services Limited, from the Leonard Technical Services Limited Pension Plan, Registration Number 521013, in the amount of 80.3% the surplus in the plan (approximately \$137,546 as at March 3, 1995) plus investment earnings thereon to the date of payment less a proportion of the expenses in excess of \$10,000 required to effect the distribution of the surplus assets.

**(i) Retirement Plan for Employees of CNG Fuel Systems Ltd., Registration Number 429969**

Payment of surplus to NOVA Chemicals Ltd., from the Retirement Plan for Employees of CNG Fuel Systems Ltd., Registration Number 429969, in the amount of 50% of the surplus in the plan (approximately \$225,000 as at February 1, 1997), plus investment earnings thereon to the date of payment and adjusted for expenses and actual assets values at the date of liquidation.

**(j) Pension Plan for Hourly-Rated Employees of Koehring Canada Limited, Registration Number 0268227**

Payment of surplus to United Dominion Industries Limited, from the Pension Plan for Hourly-Rated Employees of Koehring Canada Limited, a Division of AMCA International Limited, Registration Number 0268227, in the amount of \$849,119 as at December 31, 1996, plus investment earnings thereon to the date of payment less expenses.

**Applications Under Section 8 of the Regulation, and subsection 78(1) of the PBA - Request for Consent of the Commission to Surplus Withdrawal on Plan Wind Up to be filed in Court**

At the Commission meeting held October 24, 1996, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Retirement Plan for Consolidated Fibres Ltd. and Designated Subsidiaries, 403832**

Payment of surplus to Consolidated Fibres Ltd. from the Retirement Plan for Consolidated Fibres Ltd. and Designated Subsidiaries, Registration Number 403832, in the amount of \$129,486 as at May 31, 1990 plus investment earnings thereon to the date of payment, less expenses properly payable out of the pension fund for the Plan.

At the Commission meeting held October 24, 1996, pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, the Commission denied consent to the payment of plan surplus plus as follows:

**(a) Getty Mines Limited Retirement Plan, 915538**

Not approve the application of Getty Mines International, Inc. pursuant to subsection 78(1) of the Act and subsection 8(2) of Regulation 909, R.R.O. 1990, as amended, to a payment of surplus to the applicant from the Getty Mines Limited Retirement Plan, Registration Number 915538, as the application was not complete.

At the Commission meeting held November 21, 1996, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Electrolux Canada, Brockville Hourly Employees' Pension Plan, 583492**

Payment of surplus to Sara Lee Corporation of Canada Ltd. from the Electrolux Canada, Brockville Hourly Employees' Pension Plan, 583492, in the amount of \$78,117.18 as at October 31, 1987 plus investment earnings thereon to the date of payment, minus (i) the legal fees and disbursements incurred by the Applicant in respect of this Application and (ii) all other costs and expenses related to the continuing administration and wind-up of the Plan.

At the Commission meeting held December 12, 1996, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Ex-Cell-O Corporation of Canada Ltd., Consolidated Salaried Retirement Plan, 249847**

Payment to Textron Canada Limited (the successor to Ex-Cell-O Corporation of Canada Limited) from the Ex-Cell-O Corporation of Canada, Ltd., Consolidated Salaried Retirement Plan, now known as the Textron Canada Limited Consolidated Salaried Retirement Plan, Registration Number 249847 (the "Pension Plan"), in the amount 40% of the surplus attributable to the partial wind up of the Pension Plan, such surplus being in the amount of \$2,056,552 as at March 31, 1986 plus investment earnings thereon to the date of payment less expenses properly payable out of the pension fund for the Pension Plan.

At the Commission meeting held February 27, 1997, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) The Retirement Plan for Employees of SBS Products, Inc., 933127**

Payment of surplus to the Applicant, Deb Canadian Hygiene Inc., successor corporation to SBS Products Inc., from The Retirement Plan for Employees of SBS Products, Inc., Registration Number 933127, in the amount of \$125,239.21 as at May 31, 1991 plus all investment gains or investment losses thereon to the date of payment and any other adjustments made for proper expenses, purchases of benefits and interest on payments.

At the Commission meeting held April 24, 1997, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Employees of Rockwell International of Canada Ltd. - Measurement & Flow Control Division, 303842**

Payment of surplus to the Applicant, Rockwell International of Canada Ltd., from the Pension Plan for Employees of Rockwell International of Canada Ltd. - Measurement & Flow Control Division, Registration Number 303842, in the amount of \$331,324 as at March 31, 1991, plus investment earnings thereon to the date of payment, minus (i) the legal fees and disbursements incurred by the Applicant in respect of this Application and (ii) all other costs and expenses related to the continuing administration and wind-up of the Plan.

At the Commission meeting held June 26, 1997, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) The Fenchurch Insurance Brokers Limited Pension Plan, 595140**

Payment of surplus to the Applicant, Fenchurch Insurance Brokers Limited, from The Fenchurch Insurance Brokers Limited Pension Plan, Registration Number 595140, in the amount of \$89,498 as at September 13, 1985, adjusted for investment earnings thereon to the date of payment, and reasonable expenses of the application.

**(b) Revised Pension Plan of Leco Inc., 272849**

Payment of surplus to the Applicant, McColl-Frontenac Petroleum Inc. from the Revised Pension Plan of Leco Inc., Registration Number 272849, in the amount of \$1,563,731.57 as at July 31, 1996, plus investment earnings thereon to the date of payment.

At the Commission meeting held July 31, 1997, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Cooper Industries (Canada) Inc. Pension Plan for Bargaining Employees of Kirsch Canada Division, C-453613**

Payment of surplus to the Applicant, Cooper Industries (Canada) Inc. from the Cooper Industries (Canada) Inc. Pension Plan for Bargaining Employees of Kirsch Canada Division, Registration Number C-453613, in the amount of \$58,572.17 as at February 28, 1997, plus investment earnings thereon to the date of payment minus disbursements incurred by the Applicant in respect of this Application.

The Commission consented to the course of action proposed by the Applicant, Cooper Industries (Canada) Inc., set out in Mr. Alexander D. Muto's letter of July 22, 1997, whereby the amounts of basic benefits totaling \$1,020.96 as at May 31, 1990, payable to five individuals, who despite all reasonable efforts, the Applicant has been unable to locate, be held by the Applicant on behalf of these individuals. If any of these individuals is subsequently located or comes forward, his or her basic benefit entitlement will be paid to him or her by the Applicant.

With the exception of the benefits payable to the five individuals referred to in the previous paragraph, this consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

**Applications under subsection 78(1) of the PBA and section 10 of the Regulation - Request for Consent of the Commission to Surplus Withdrawal from a Continuing Plan**

At the Commission meeting held February 27, 1997, the Commission consented pursuant to subsection 78(1) of the PBA and s. 10 of the Regulations, to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Ontario Telephone Employees' Credit Union Limited Staff Pension Plan, 285015**

Payment of surplus to the Ontario Telephone Employees' Credit Union Limited from the Ontario Telephone Employees' Credit Union Limited Staff Pension Plan, Registration Number 285015, in the amount of \$2,472,713 as at December 31, 1995 plus investment earnings thereon to the date of payment less any proper actuarial and legal fees and other proper administrative expenses incurred in obtaining the refund.

At the Commission meeting held May 22, 1997, the Commission consented pursuant to subsection 78(1) of the PBA and s. 10 of the Regulations, to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Kamana Holdings Inc. Executive Pension, 407601**

Payment of surplus to the Applicant, Kamana Holdings Inc., from the continuing pension plan, Kamana Holdings Inc. Executive Pension Plan, Registration Number 407601, in the amount of \$185,375 as at December 1, 1996.

**Applications Approved under subsections 63(7) and (8) of the PBA - Return of Member Contributions**

At the Commission meeting held October 24, 1996, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) Pension Plan For Executive Employees of Ranco Controls, Canada, Limited, 440321**

Refund of member contributions from the Pension Plan For Executive Employees of Ranco Controls, Canada, Limited, 440321, in the aggregate amount of \$27,540.29 as at January 1, 1995 plus credited interest to the date of payment.

**(b) Amended Pension Plan for Designated Executive Employees of Canadian Standards Association, 455733**

Refund of member contributions from the Amended Pension Plan for Designated Executive Employees of Canadian Standards Association, 455733.

At the Commission meeting held December 12, 1996, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) Consolidated Pension Plan For Employees of Canadian Affiliates of BTR Canada Holdings Inc., 559716**

Refund of member contributions from the Consolidated Pension Plan For Employees of Canadian Affiliates of BTR Canada Holdings Inc., 559716, in the aggregate amount of \$3,724.00 as at August 31, 1992 plus credited interest to the date of payment.

**(b) Carruthers & Wallace Limited Pension Plan, 233486**

Refund of member contributions from the Carruthers & Wallace Limited Pension Plan, 233486, in the aggregate amount of \$158,305.03 as at January 1, 1993, plus credited interest to the date of payment.

At the Commission meeting held January 23, 1997, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) Pension Plan for the Executive Directors of The Canadian Real Estate Association (as applicable to Pierre J. Beauchamp), 1012871**

Refund of member contributions from the Pension Plan for the Executive Directors of The Canadian Real Estate Association (as applicable to Pierre J. Beauchamp), Registration Number 1012871, in the amount of \$44,920 as at January 1, 1994 plus credited interest to the date of payment.



At the Commission meeting held May 22, 1997, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) The Retirement Annuity Plan for Permanent Salaried Employees of the Canadian Chamber of Commerce, 337485**

Refund of member required contributions from The Retirement Annuity Plan for Permanent Salaried Employees of the Canadian Chamber of Commerce, Registration Number 337485, in the aggregate amount of \$48,471.11 as at November 1, 1995 plus credited interest to the date of payment.

At the Commission meeting held June 26, 1997, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) Nelson Canada, A Division of Thompson Canada Limited Employees Pension Plan, 283242**

Refund of member required contributions from Nelson Canada, A Division of Thompson Canada Limited Employees Pension Plan, Registration Number 283242, in the aggregate amount of \$90,571 plus investment earnings to the date of payment.

At the Commission meeting held July 31, 1997, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

**(a) The Agency Force Pension Fund, 214197**

Refund of member required contributions from The Agency Force Pension Fund, Registration Number 214197, in the aggregate amount of \$4,331,660 as at January 1, 1992 plus investment earnings to the date of payment.

**Applications Approved under subsection 78(4) of the PBA - Return of Overpayment**

At the Commission meeting held November 21, 1996, the Commission consented to the refund of an overpayment as follows:

**(a) Retirement Plan for Employees of Electro Porcelain Co. Ltd., 584813**

Refund to the applicant from the Retirement Plan for Employees of Electro Porcelain Co. Ltd., 584813, of \$40,000 overpayment made in 1991, plus investment earnings thereon to the date of payment.

At the Commission meeting held December 12, 1996, the Commission consented to the refund of an overpayment as follows:

**(a) The Pension Plan for Executive Employees of Dare Foods Limited, 977538**

Refund to the applicant from The Pension Plan for Executive Employees of Dare Foods Limited, 977538, of \$62,649.14 overpayment to the pension fund made in 1996, plus investment earnings thereon to the date of payment.

At the Commission meeting held February 27, 1997, the Commission consented to the refund of an overpayment as follows:

**(a) Pension Plan for Salaried Employees of Exide Canada Inc. Battery Division, 483404**

Refund to the Applicant, Exide Canada Inc. Battery Division, from the Pension Plan for Salaried Employees of Exide Canada Inc. Battery Division, Registration Number 483404, of \$145,496 overpayment made between January 1, 1996 to June 30, 1996, plus investment earnings thereon to the date of payment.

At the Commission meeting held August 21, 1997, the Commission consented to the refund of an overpayment as follows:

**(a) Amended Pension Plan for Designated Executive Employees of Canadian Standards Association, 455733**

Refund to the Applicant from the Amended Pension Plan for Designated Executive Employees of Canadian Standards Association, Registration Number 455733, in the amount of \$301,752 as at December 31, 1996 plus investment earnings thereon to the date of payment.

**Applications Approved under section 105 and subsection 78(4) of the PBA - Extension of Time and Return of Overpayment**

At the Commission meeting held December 12, 1996, the Commission consented to the refund of an overpayment as follows:

**(a) Vigoro Inc. Hourly Employees Pension Plan, 997205**

1. pursuant to section 105 of the Act, to extend the time limit specified under subsection 78(4) of the Act, for filing the application; and,

2. pursuant to subsection 78(4) of the Act, to a refund to the applicant from the Vigoro Inc. Hourly Employees Pension Plan, 997205, of \$58,111.00, overpayment to the pension fund made between January 10, 1986 and April 30, 1996, plus investment earnings thereon to the date of payment.

At the Commission meeting held March 27, 1997, the Commission consented to the refund of an overpayment as follows:

**(a) Pension Plan of TESC Contracting Limited for T.J. Lachance, 0691154**

1. pursuant to section 105 of the Act, to extend the time limit specified under subsection 78(4) of the Act, for filing the application to its 1995 fiscal year; and,
2. pursuant to subsection 78(4) of the Act, to a refund to the Applicant, TESC Contracting Limited, from the Pension Plan of TESC Contracting Limited for T.J. Lachance, Registration Number 0691154, of \$35,012 which represents the overpayment made in 1991 and 1992, plus investment earnings thereon to the date of payment.

**(b) Pension Plan of TESC Contracting Limited for F. Lachance, 0691162**

1. pursuant to section 105 of the Act, to extend the time limit specified under subsection 78(4) of the Act, for filing the application to its 1995 fiscal year; and,
2. pursuant to subsection 78(4) of the Act to a refund to the Applicant, TESC Contracting Limited, from the Pension Plan of TESC Contracting Limited for F. Lachance, Registration Number 0691162, of \$16,939 which represents the overpayment made in 1991 and 1992, plus investment earnings thereon to the date of payment.

At the Commission meeting held April 24, 1997, the Commission consented to the refund of an overpayment as follows:

**(a) Hospitals of Ontario Pension Plan, 0346007**

In light of the representations in the application set out in a letter dated March 18, 1997, from Ms. Kim Walcott Kelly of HOOPP that an overpayment has been made, the Pension Commission of Ontario consent

1. pursuant to section 105 of the Pension Benefits Act, R.S.O. 1990, c. P.8, to extend the time limit, specified under subsection 78(4) of the Act, for filing the application;
2. pursuant to subsection 78(4) of the Act, to a refund of \$5,859.51 to Cornwall Regional Hospital Linen Services, a participating employer under the Hospitals of Ontario Pension Plan, Registration Number 0346007, which represents the overpayment made to the plan in 1996; and,
3. to a waiver of the requirements in the Commission's policy regarding the reimbursement of overpayment from a Pension Fund, that requires a formal application be made to the Pension Commission of Ontario, and some form of notice be given to all pension plan members.

The Pension Commission of Ontario denied the request by HOOPP that it be given permission to refund overpayments to employers without making application to the Commission in accordance with Commission policy R350-101 for all cases where the amount to be refunded is less than \$5,000.00.

At the Commission meeting held May 22, 1997, the Commission consented to the refund of an overpayment as follows:

**(a) Drug Trading Company Limited Pension Plan for Unionized Employees, 249268**

1. pursuant to section 105 of the Pension Benefits Act, R.S.O. 1990, c. P.8, to extend the time limit specified under subsection 78(4) of the Act, for filing the application;
2. pursuant to subsection 78(4) of the Act, to a refund to Drug Trading Company Limited from the Drug Trading Company Limited Pension Plan for Unionized Employees, Registration Number 249268, of \$350,433.31 which represents the overpayment made in 1996, plus investment earnings thereon to the date of payment.

At the Commission meeting held June 26, 1997, the Commission consented to the refund of an overpayment as follows:

**(a) Buhler (Canada) Inc. Pension Plan, 253468**

- (1) pursuant to section 105 of the Pension Benefits Act, R.S.O. 1990, c. P.8, extend the time limit specified under subsection 78(4) of the Act, because of the unique circumstances of this case; and,

- (2) pursuant to subsection 78(4) of the Act, to a refund to the Applicant, Buhler (Canada) Inc., from the Buhler (Canada) Inc. Pension Plan, Registration Number 253468, of \$2,293.07 which represents the overpayment to the pension fund as at December 31, 1996, plus investment earnings thereon to the date of payment.

#### Pension Benefits Guarantee Fund ("PBGF")

##### **Notice of Proposed Declarations**

On January 23, 1997, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

- (a) **Pension Plan for Union Employees of Algra Plastics Inc., 0682179**

On April 24, 1997, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

- (b) **Pension Plan for Wage Employees of Airvector Inc., 0052121**

On May 22, 1997, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

- (a) **Pension Plan for Salaried Employees of Carpita Corporation and Subsidiary and Affiliated Companies, 0598425**

On June 26, 1997, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

- (a) **Pension Plan for Hourly Employees of North American Plastics Co. Limited, 425934**

##### **Declaration that the PBGF Applies to Pension Plans**

On November 21, 1996, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies to the following pension plan:

- (a) **Retirement Plan for Employees of Elan Corporation, 0567024**

On March 27, 1997, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies to the following pension plan:

- (a) **Pension Plan for Union Employees of Algra Plastics Inc., 0682179**

On April 24, 1997, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies to the following pension plan:

- (a) **Erie Industries (1987) Inc. Employees Retirement Plan, 0577320**

On June 26, 1997, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies to the following pension plan:

- (a) **Pension Plan for Wage Employees of Airvector Inc., 0052121**

On July 31, 1997, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies to the following pension plan:

- (a) **The Pension Plan for Salaried Employees of Carpita Corporation and Subsidiary and Affiliated Companies, 0598425**

On August 21, 1997, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies to the following pension plan:

- (a) **Pension Plan for Hourly Employees of North American Plastics Co. Ltd., 425934**

##### **Allocations, subsection 34(7) of Regulation 909 under the PBA**

On November 21, 1996, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

- (a) **Retirement Plan for Employees of Elan Corporation, 0567024**

Allocate and pay an amount not to exceed \$107,445 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation.

- (b) **Non-Contributory Pension Plan for Hourly-Paid Employees of Standard Modern Technologies Corporation, 432328 (C-16492)**

Allocate and pay an amount not to exceed \$1,220,300 to provide, together with the Ontario assets of the Plan for the benefits determined in accordance with section 34 of the Regulation.



On February 27, 1997, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**(a) Pension Plan for Designated Hourly-Paid Employees of Penmans Apparel Inc., 966242**

Allocate and pay an amount not to exceed \$51,152.00 to provide, together with the Ontario assets of the Plan for the benefits determined in accordance with section 34 of the Regulation.

On March 27, 1997, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**(a) Pension Plan for Union Employees of Algra Plastics Inc.**

Allocate and pay an amount not to exceed \$61,742 to provide, together with the Ontario assets of the Plan for the benefits determined in accordance with section 34 of the Regulation.

On April 24, 1997, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**(a) Erie Industries (1987) Inc. Employees Retirement Plan, 0577320**

Allocate and pay an amount not to exceed \$633,508 to provide, together with the Ontario assets of the Plan for the benefits determined in accordance with section 34 of the Regulation.

On June 26, 1997, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**(a) Pension Plan for Wage Employees of Airvector Inc., 0052121**

Allocate and pay an amount not to exceed \$105,683 to provide, together with the Ontario assets of the Plan for the benefits determined in accordance with section 34 of the Regulation.

On August 21, 1997, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**(a) Pension Plan for Hourly Employees of North American Plastics Co. Ltd., 425934**

Allocate and pay an amount not to exceed \$632,800 to provide, together with the Ontario assets of the Plan for the benefits determined in accordance with section 34 of the Regulation.

## Commission Decision with reasons for XDEC-35

**INDEX NO.:** XDEC-35

**PLAN:** Molson Breweries Pension Plan (1968) for Hourly Employees of the Toronto Plant, PN 379677 (formerly C-10945) (the "Fleet Street Plan") to the Molson Breweries Pension Plan, PN 334094 (formerly C-4116) ("Etobicoke Plan")

**DATE OF DECISION:** January 10, 1997. Amended January 23, 1997.

**PUBLISHED:** PCO BBS - January 14, 1997

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "PBA");

**AND IN THE MATTER OF** a Decision of the Superintendent of Pensions dated December 21, 1995 pursuant to Section 81 of the Act to approve the transfer of certain assets from the Molson Breweries Pension Plan (1968) for Hourly Employees of the Toronto Plant, Registration Number 379677 (formerly C-10945) (the "Fleet Street Plan") to the Molson Breweries Pension Plan, Registration Number 334094 (formerly C-4116) (Etobicoke Plan);

**AND IN THE MATTER OF** a request for a hearing in accordance with sections 88 and 89 of the Act.

**Before:** Monica J. Townson, Acting Chair,  
Kathryn M. Bush, Member,  
Darcie L. Beggs, Member,  
Joyce A. Stephenson, Member

**Appearances:** For the applicant:  
Mr. Mark Zigler,  
Mr. Michael Mazzuca,  
Koskie Minsky

For the Superintendent:  
Mr. Shaun Devlin,  
Ms. Peggy McCallum

For Molson Breweries:  
Mr. J. Brett Ledger,  
Mr. Ian McSweeney,  
Osler Hoskin & Harcourt

**Hearing Dates:** November 13 and 14, 1996  
Toronto, Ontario

**Decision Released:** January 10, 1997  
Toronto, Ontario

## REASONS FOR DECISION

### Nature of the Application

#### The Issues

1. Does Local 325 have status to request a hearing pursuant to PBA s. 89 in the circumstances of this case regarding the refusal of the Superintendent to order a partial wind up of the Fleet Street Plan under PBA s. 69?
2. Does the Commission have jurisdiction to consider issues relating to alleged assurances made by Molson during the course of collective bargaining? If so, is it appropriate to determine the relevance of that evidence on a preliminary attendance? If that is the case, is such evidence relevant to the hearing? For the purposes of this issue only and on a without prejudice basis, it was assumed that Molson gave assurances to Local 325 in the course of collective bargaining that there would not be a merger of the Fleet Street and Etobicoke plans.
3. Is the 1990 transfer issue properly before the Commission in the circumstances of this case?
4. May the Commission conduct a hearing under PBA s. 90 in the circumstances of this case? If so, may it conduct a s. 89 hearing and a s. 90 hearing simultaneously?
5. Do the Applicants have a right to a PBA s. 89 hearing arising from an issue under PBA s. 81 in the circumstances of this case?

#### The Facts

1. Effective August 1, 1989, Molson Breweries of Canada Limited amalgamated with Carling O'Keefe Breweries of Canada Limited to form a partnership known as Molson Breweries ("Molson").

2. At the time of the amalgamation, Molson Breweries of Canada Limited operated a plant at Fleet Street in Toronto. Hourly employees at that location were represented by a predecessor to the Brewery, General and Professional Workers' Union ("BGPWU"). These employees were members of the Molson Breweries Pension Plan (1968) for Hourly Employees of the Toronto Plant (the "Fleet Street Plan").
3. Also at the time of the amalgamation, Carling O'Keefe Breweries of Canada Limited operated a plant in Etobicoke. The majority of the hourly employees at that location were represented by Local 325 of the Canadian Union of Brewery and General Workers ("Local 325") and other hourly employees were represented by BGPWU. These employees were members of the Carling O'Keefe Ontario Wage Rate Employees Pension Plan, now known as the Molson Breweries Pension Plan for Hourly Employees in Etobicoke (the "Etobicoke Plan").
4. Prior to the amalgamation, Carling O'Keefe sent a letter to the Superintendent of Pensions ("Superintendent") dated February 16, 1989 noting the amalgamation and that plant "rationalizations" were expected to occur.
5. Shortly after the amalgamation, Molson announced it would be closing the Fleet Street plant.
6. By letter to the Superintendent dated December 20, 1989, Molson set out various details of the Molson Breweries Merger Adjustment Program ("MAP"). According to the letter, MAP was a voluntary program which offered enhanced severance and early retirement packages to all salaried and hourly employees of Molson.
7. By letter dated July 13, 1989, Molson had previously provided estimates of the wind up funded ratios of its Ontario pension plans, including the Fleet Street and Etobicoke Plans, as of August 1, 1989, both before MAP and after MAP.
8. By letter dated January 8, 1990, the Superintendent advised that "we have no objection in principle to the adjustment program which you have outlined for us...subject to filing the necessary plan amendments and the actuarial cost certificates...". By letter dated January 22, 1992, Towers Perrin, actuaries for Molson, filed with the Pension Commission ("PCO") a letter with attachments.
9. According to a Molson letter to the Superintendent dated February 20, 1995, under MAP, "the retirement/termination benefits provided under the pension plans at the Barrie, Etobicoke and Toronto (Fleet Street) plants were guaranteed to be no less valuable than those which would have emerged under a plan wind up scenario - including full vesting and early retirement "grow-in" features.....".
10. Production of product at the Fleet Street plant ceased on October 31, 1990 with the transfer of virtually all remaining employees from Fleet Street to Etobicoke or Barrie occurring on November 5, 1990. Following November 5, 1990, a few active employees remained at Fleet Street primarily to complete equipment disassembly until sometime in 1991 and a number of employees on long-term disability continued to accrue pensionable service under the Fleet Street Plan.
11. By letter dated February 20, 1995, Molson confirmed that "all members of the [Fleet Street Plan] who did not elect MAP were offered continuing employment (with continuing pension accruals) at Molson's brewery facilities in Etobicoke or Barrie".
12. As a result, 182 members of the Fleet Street Plan transferred membership to the Etobicoke Plan in or about 1990.
13. Past service liabilities were transferred from the Fleet Street Plan to the Etobicoke Plan and, according to a letter from Royal Trust to Molson dated September 24, 1996, on December 30, 1991, assets of \$2,505,462.00 were transferred to the Etobicoke Plan.
14. The active membership of the Fleet Street Plan declined from 456 at December 31, 1989 to between 26 and 29 at December 31, 1990. After the 1990 transfers were completed, the membership of the Fleet Street Plan consisted of retired and terminated vested members, as well as a number of employees on long term disability who continued to accrue pensionable service under the Fleet Street Plan.
15. By letter dated July 22, 1993, counsel for the Canadian Union of Brewery and General Workers, Local 325 ("Local 325") wrote to Pension Commission staff ("PCO") about the 1990 transfers. This letter was the first in a number of letters from counsel for Local 325 to the Superintendent and PCO staff regarding the 1990 transfers, requesting a partial wind up of the Fleet Street Plan, and subsequently requesting that the merger should not be approved.
16. By letter dated November 30, 1994, Molson provided the PCO with notice that it planned to merge the Fleet Street Plan and the Etobicoke Plan effective January 1, 1994 subject to the PCO's approval.
17. By letter dated December 8, 1994, counsel for Local 325 wrote to the Superintendent expressing concern with the proposed merger for a number of reasons, including the concern that "representations were made in collective bargaining most recently that such a merger would not take place".
18. By letter dated January 5, 1995, counsel for Local 325 wrote again to the PCO respecting this issue.



19. By letter dated December 9, 1994, Towers Perrin advised the PCO that the two plans "have been consolidated effective January 1, 1994". Towers Perrin enclosed a "merger valuation report, effective January 1, 1994, for the consolidated plan". The report indicated the Fleet Street Plan had 11 active, disabled members, 222 retired members, and 8 terminated vested members at January 1, 1994.
20. By letter dated December 19, 1994, Molson wrote to the Superintendent in response to Local 325's December 8, 1994 letter. Molson denied that representations had been made in collective bargaining that the merger would not occur: "In fact, discussions and representations on this matter during negotiations clearly contemplated the possibility of a merger of these plans."
21. By letter dated March 1, 1995, Towers Perrin provided the PCO with a board resolution "which adopts the merger of the Toronto Plan with the Etobicoke Plan", together with a restated plan document for the "merged plan" and other documents.
22. By letter dated May 25, 1995, Local 325 provided the Superintendent with a copy of a May 15, 1995 letter from an actuary it had commissioned to comment on the proposed merger.
23. By letters dated August 24, 1995 and September 14, 1995, the PCO made inquiries with Towers Perrin regarding actuarial issues related to the proposed merger. Towers Perrin responded to these issues by letters dated September 5, 1995 and September 27, 1995 respectively.
24. By letter to Towers Perrin dated December 21, 1995, the Superintendent stated: "Based on the submission of the required supporting documents and certifications, I hereby consent to the transfer of \$18,735,628 plus interest from January 1, 1994 to the date of the transfer plus net cash flow adjustments from the [Fleet Street Plan] to the [Etobicoke Plan]."
25. By letter dated December 21, 1995, the Superintendent advised counsel for Local 325 of "my reasons for this decision":
  - (a) "I will first deal with your request for a partial wind-up of the [Fleet Street Plan]. All active staff at that location were offered an early retirement window option or were voluntarily relocated to another facility. Neither individual members of that plan nor the employees' bargaining agent have asked for a partial wind-up. Therefore, I decided not to use my discretion to order a partial wind up of the [Fleet Street Plan]."
  - (b) "In respect of the merger of the above two plans, you had expressed a concern about the effect of the transfer of assets from the [Fleet Street Plan] on the funding of the [Etobicoke Plan]. Consistent with the approach suggested in policy A700-250, published November 29, 1995, the funded ratio of the [Etobicoke Plan] will be brought up to the wind-up funded ratio of the [Fleet Street Plan]. This is described in the merger report which staff had earlier sent to you. On this basis I cannot conclude that the benefits of the members are not protected by the asset transfer."
26. On January 18, 1996, Local 325 requested a hearing regarding the refusal of the Superintendent to make an Order requiring the wind-up of the Fleet Street Plan and the decision of the Superintendent consenting to the merger of the Plans.
27. According to a letter dated September 24, 1996 from Royal Trust to Molson, assets of the Fleet Street Plan in the amount of \$18,189,128.55 were transferred to the Etobicoke Plan on March 1, 1996.
28. On March 27, 1996, Local 325, in its amended request for a hearing under the PBA, again requested a hearing, seeking orders that:
  - a) That the Order of the Superintendent merging the Plans be set aside, and that the Merger Report, filed in respect of the proposed merger, be rejected as inappropriate, pursuant to section 88 of the PBA;
  - (b) That the Superintendent be directed to issue an order that the Fleet Street Plan be wound up effective as of the date in 1991 that the Fleet Street plant ceased to have active employees; and
  - (c) In the alternative that the transfer of active members from the Fleet Street Plan to the Etobicoke Plan in 1991 and the transfer of inactive members from the Fleet Street Plan to the Etobicoke Plan in December 1995, be considered as a single plan merger and that Molson be required to fund the liabilities of the Fleet Street Plan accordingly.

#### The Relevant Legislation

**Sec. 88. Order by Commission.**—(1) The Commission, in the circumstances mentioned in subsection (2) and subject to section 90 (notice and representations), by order may require an administrator to take the action specified in subsection (3).

- (2) *Grounds for order.*—The Commission may make an order under this section where the Commission is of the opinion,

- (a) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan are inappropriate for a pension plan;
  - (b) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan do not accord with generally accepted actuarial principles; or
  - (c) that a report submitted in respect of a pension plan does not meet the requirements and qualifications of this Act, the regulations or the pension plan.
- (3) *Contents of order.*—An order under this section may include, but is not limited to, requiring the preparation of a new report and specifying the assumptions or methods or both that shall be used in the preparation of the new report.
- (3) *Notice of proposal re membership.*—Where the Superintendent proposes to make or to refuse to make an order requiring an administrator to accept an employee as a member of a class of employees for whom a pension plan is established or maintained, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator, and the Superintendent shall serve or require the administrator to serve a copy of the notice and the written reasons on the employee.
  - (4) *Notice of proposal to attach terms and conditions to approval or consent.*—Where the Superintendent proposes to refuse to give an approval or consent or proposes to attach terms and conditions to an approval or consent under this Act or the regulations, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant for the approval or consent.

## HEARING AND APPEAL

**Sec. 89. *Notice of proposal to refuse or revoke.***—(1) Where the Superintendent proposes to refuse to register a pension plan or an amendment to a pension plan or to revoke a registration, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant or administrator of the plan.

- (2) *Notice of proposal to make order.*—Where the Superintendent proposes to make an order under,
  - (a) subsection 42(9) (repayment of money transferred out of pension fund);
  - (b) subsection 43(5) (repayment of money paid to purchase pension, deferred pension or ancillary benefit);
  - (c) subsection 80(6) (transfer of assets to pension fund of successor employer);
  - (d) subsection 81(6) (transfer of assets to new pension fund); or
  - (e) section 87 (administration of pension plan in contravention of Act or regulation),

the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and on any other person to whom the Superintendent proposes to direct the order.

- (5) *Notice of proposed wind up order.*—Where the Superintendent proposes to make an order requiring the wind up of a pension plan or declaring a pension plan wound up, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and the employer, and the Superintendent may require the administrator to transmit a copy of the notice and the written reasons on such other persons or classes of persons or both as the Superintendent specifies in the notice to the administrator.
- (6) *Notice requiring hearing.*—A notice under subsection (1), (2), (3), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Commission if the person delivers to the Commission, within thirty days after service of the notice under that subsection, notice in writing requiring a hearing, and the person may so require such a hearing.
- (7) *Power of Superintendent.*—Where the person on whom the notice is served does not require a hearing in accordance with subsection (6), the Superintendent may carry out the proposal stated in the notice.
- (8) *Hearing.*—Where the person requires a hearing by the Commission in accordance with subsection (6), the Commission shall appoint a time for and hold the hearing.

- (9) *Power of Commission.*—At or after the hearing, the Commission by order may direct the Superintendent to carry out or to refrain from carrying out the proposal and to take such action as the Commission considers the Superintendent ought to take in accordance with this Act and the regulations, and for such purposes, the Commission may substitute its opinion for that of the Superintendent.
- (10) *Conditions.*—The Commission may attach such terms and conditions to its order or to the registration as the Commission considers proper to give effect to the purposes of this Act.
- (11) *Parties.*—The Superintendent, the person who requires a hearing and such other persons as the Commission specifies are parties to the proceeding before the Commission under this section.
- (12) *Opportunity to show compliance.*—A party to a hearing shall be given a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the registration of the pension plan.
- (13) *Examination of documentary evidence.*—A party to a hearing under this section shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.
- (14) *Release of documentary evidence.*—Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person within a reasonable time after the matter in issue has been finally determined.
- (2) *Additional notices.*—The administrator shall transmit copies of the Commission's notice to such other persons or classes of persons or both as the Commission specifies in the notice to the administrator.
- (3) *Representations.*—A notice by the Commission under subsection (1) shall state that the administrator, the persons and the representatives and members of classes of persons specified in the notice are entitled to make written representations to the Commission within thirty days after service of the notice under that subsection.
- (4) *Examination of documentary evidence.*—An individual who is entitled to make representations to the Commission under subsection (3) shall be afforded an opportunity, during the period of time when representations may be made, to examine any written or documentary evidence that will be produced or any report the contents of which will be considered by the Commission when the Commission considers its proposal.
- (5) *Notice of decision.*—The Commission shall transmit a copy of its decision, together with written reasons therefor, to the administrator, the employer and every other person who made representations to the Commission in accordance with subsection (3).
- (6) *Procedure.*—The Statutory Powers Procedure Act does not apply in respect of a declaration, refusal or order mentioned in subsection (1) by the Commission.

## Result

The Commission's reasons and decision follow.

**Sec. 90. Notice of proposal by Commission.**—(1) Where the Commission proposes to consider,

- (a) making a declaration that the Guarantee Fund applies to a pension plan;
- (b) making an order requiring the administrator of a pension plan to take specific action in relation to a report in respect of the pension plan; or
- (c) refusing to consent to a refund of contributions under section 63 (refunds),

the Commission shall serve notice of the proposal together with written reasons therefor on the administrator of the pension plan.

1. Local 325 seeks an order that the Fleet Street Plan be wound up effective as of the date in 1991 that the Fleet Street plant ceased to have active employees. Local 325's hearing request is based on the Superintendent's refusal to make an order that the Fleet Street Plan be wound up, coming within the provisions of subsection 89(5) and thereby subsection 89(6). We have decided that the PBA must be read so as to permit a hearing request only when the party is affected by an order or a refusal to make an order. We have also decided that neither Local 325 nor any of its members are affected by the Superintendent's refusal to order a partial wind-up of the Fleet Street Plan. Accordingly, we have decided that Local 325 has no right to request a hearing with respect to the issue of the partial wind-up of the Fleet Street Plan.



2. We have decided that we are without jurisdiction to consider the impact of alleged assurances made by Molson during the course of collective bargaining given the requirements for the Superintendent's approval of a plan merger.

We would wish to reiterate the previous decisions of the Commission that the Collective Agreement relating to members of a pension plan will often be vital to the determination of the pension promise and therefore must be fully considered. Further, we wish to make clear that the *Caterpillar of Canada Ltd. v. Superintendent of Pensions* (May 28, 1996) decision of this Commission is expressly not overruled. Accordingly, it remains the position of the Commission that where the Collective Agreement affects the determination of the promised pension benefits that it is a matter squarely within the jurisdiction of the Commission.

3. We have decided that the 1990 Transfer issue has never been properly placed before the Superintendent of Pensions (the "Superintendent") and has not been the subject matter of a ruling by the Superintendent. Accordingly, we find that the matter is not properly before the Commission under section 89 of the PBA and will request the Superintendent to consider this matter on an expedited basis.

If the Superintendent makes an order, or refuses to make such an order, Local 325 will then have a right to a hearing under s.89 of the PBA.

- 4.&5. With respect to the fourth and fifth issues, given the disposition of the first issue, the parties would appear to be in agreement that a hearing under section 90 of the PBA will permit consideration of all relevant issues. Accordingly, we will proceed on the basis of a section 90 hearing.

We would note that we are expressly not deciding whether the issue of a pension plan merger could ever be properly heard under section 89 of the PBA as the circumstances of this case do not necessitate such a finding.

Dated this 10th of January, 1997 at the City of Toronto, Province of Ontario.

Monica J. Townson, Acting Chair  
Kathryn M. Bush, Member  
Darcie L. Beggs, Member  
Joyce A. Stephenson, Member

INDEX NO.:

XDEC-36

PLAN:

The Pension Plan for Employees of the Corporation of the City of Etobicoke,  
PN 0312629

DATE OF DECISION:

October 4, 1997

PUBLISHED:

PCO BBS - November 4, 1997

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990,  
c. P.8, as amended;

**Hearing Dates:** September 18, 1997 and  
October 4, 1997  
Toronto, Ontario

AND IN THE MATTER OF an application by The Corporation of the City of Etobicoke to the Pension Commission of Ontario under subsections 78(1) and 79(3) of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended, and clause 8(1)(b) of Regulation 909, R.R.O. 1990,, as amended, for the consent of the Commission to payment of surplus funds from the Pension Plan for Employees of the Corporation of the City of Etobicoke, Registration Number 0312629;

**Decision Released:** October 4, 1997  
Toronto, Ontario

## REASONS FOR DECISION

### Nature of the Application

AND IN THE MATTER OF motions by the Canadian Union of Public Employees, Local 185 and eight former members of the pension plan to adjourn the application before the Commission pending production of various documents by the City of Etobicoke.

**Before:** C.S. (Kit) Moore, Chair  
Shiraz Y.M. Bharmal, Member  
Donald Collins, Member  
M. Elizabeth Greville, Member  
David E. Wires, Member

The Applicant, The Corporation of the City of Etobicoke (the "City"), applied to the Pension Commission of Ontario (the "Commission") for consent to payment to the City in of the amount of \$15,394,726 (representing 65% of the total surplus shown in the wind up report as of December 31, 1996) from the Pension Plan of the Corporation of the City of Etobicoke, Registration Number 0312629 (the "Plan") adjusted for investment earnings thereon to the date of payment and subject to adjustment for any difference between the actual and expected actuarial and related expenses in respect of processing the application.

**Representation:** For the applicant:  
Ms. Elizabeth Brown  
Mr. Steve Moate  
Ms. Natasha vandenHoven

The application was made pursuant to a surplus sharing agreement whereby approximately 35% of the total surplus determined as at December 31, 1996 after payment of all benefits and annuitization of all pensions in respect of this application would be distributed to 280 former members and other persons entitled to benefits under the Plan as of the effective date of wind-up, in the form of benefit enhancements and a cash payment plus interest, subject to applicable withholding tax.

For the union and two former members of the pension plan:  
Mr. Murray S. Gold  
Mr. Michael Mazzuca

For four former members of the pension plan:  
Ms. Judith Hendy, Q.C.  
Mr. Thomas Hendy

For two former members of the pension plan:  
Mr. Sabatino Stabile, Q.C.

The application, including a description of procedures followed by the City, and supporting documentation, was received by the Commission on June 20, 1997 and scheduled to be heard on or after September 18, 1997. The Commission also received letters from six former members who objected to the proposed distribution of surplus on the grounds that it was not sufficiently fair and reasonable. In several cases, these former members retained legal counsel to represent

them at the Commission meeting at which the City's application was to be considered. A letter was also received from the President of Local 185 of the Canadian Union of Public Employees (the "Union") advising the Commission of the Union's concerns with the proposed distribution of surplus funds.

At the Commission's meeting of September 18, 1997, at which the application was to be heard, the Commission dealt with a motion by the Union and 8 former members of the Plan to adjourn the application pending production of various documents by the City. The Commission agreed to adjourn the hearing of the application to October 4, 1997, by which time the additional documents could be produced and the application heard prior to the City's final Council meeting on October 6, 1997. The Commission also agreed to receive submissions on whether or not the City should require the consent of the Union and to deal with this issue as a preliminary matter on October 4, 1997.

On October 4, 1997, the Commission first decided on the issue of Union consent. Any requirement to obtain Union consent was opposed by the City, which had not sought the Union's consent prior to submitting the application. The Commission decided that the Union's consent was not required for this application, for the reasons set out below.

The Commission also heard the application, based on the written submissions received prior to the hearing and oral submissions presented during the hearing. The surplus application was granted. The Commission agreed to provide written reasons for its decision on the preliminary issue, and for its consent to the application, and these reasons follow.

#### The Facts

Effective December 31, 1996, the Plan was wound up. On September 16, 1997, the Superintendent of Pensions for the Province of Ontario (the "Superintendent") approved payment of basic benefits to former members in accordance with the Plan Wind-up Actuarial Report as at December 31, 1996.

Prior to the commencement of the hearing on September 18, 1997, the Commission was provided with copies of the application to share surplus remaining after the Plan Wind-up, with 280 former members or their beneficiaries as at December 31, 1996. The Commission also received correspondence from the Union and 8 former members, outlining their concerns about the application, and in certain cases requesting adjournment of the hearing.

On September 18, 1997, the Commission agreed to adjourn the hearing to October 4, 1997, and issued an Order for the parties to produce and distribute certain documents relevant to the determination of the issue of Union consent forthwith,

and agreed to hear brief oral submissions from the parties on October 4, 1997. As noted earlier, the Commission was asked, and agreed, to deal with the preliminary issue of whether or not the Union's consent to the application was required.

#### Preliminary Issue Regarding Union Consent

Clause 8(1)(b) of Ontario regulation 909, as amended, to the Pension Benefits Act, R.S.O. 1990 c. P.8, precludes payment out of surplus to an employer unless certain consent requirements have been met.

- 8.(1) No payment may be made from surplus out of a pension plan that is being wound up in whole or in part unless, ...
- (b) the payment is to be made to an employer with the written agreement of,
    - (i) the employer,
    - (ii) the collective bargaining agent of the members of the plan or, if there is no collective bargaining agent, at least two-thirds of the members of the plan, and
    - (iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind up as the Commission considers appropriate in the circumstances.

In the Act, Section 1 includes the following definitions:

"member" means a member of the pension plan; and  
"former member" means a person who has terminated employment or membership in a pension plan, and,

- (a) is entitled to a deferred pension payable from the pension fund,
- (b) is in receipt of a pension payable from the pension fund,
- (c) is entitled to commence receiving payment of pension benefits from the pension fund within one year after termination of employment or membership, or
- (d) is entitled to receive any other payment from the pension fund.



Clause 8(1)(b) of the Regulation deals with each of these two defined terms separately in its requirements regarding written agreement of other than the employer. Subclause 8(1)(b)(ii) deals with "members" and subclause 8(1)(b)(iii) deals with "former members and other persons entitled to payments ..." Where the members of the plan have a collective bargaining agent, its written agreement is required under s. 8(1)(b)(ii). No such requirement is included in s. 8(1)(b)(iii), the consent requirement regarding former members.

In the case of this application, the Plan consists only of former members and other persons entitled to payments under the Plan. The Plan has no members within the meaning of Section 1 of the Act.

The Commission was not persuaded by the argument that "former member" is a subset of "member" and that s. 8(1)(b)(ii) should also apply for former members. The wording of subclauses 8(1)(b)(ii) and 8(1)(b)(iii) clearly differentiates member and former member.

As a result, the applicable subclause is s. 8(1)(b)(iii) and the City is not required to obtain the consent of the Union. The Commission's ruling on this preliminary issue was unanimous.

#### Issues Regarding Surplus

In order for the City to succeed in its application, it must satisfy the requirements in subsections 78(1) and 79(3) of the Act, and clause 8(1)(b) of the Regulation. In addition to the preliminary issue discussed above, the Commission focussed on two issues that arose during its deliberations on the application.

#### **1) Did the City obtain a sufficiently high level of informed consent from former members?**

In the addendum to its application, submitted on June 20, 1997, the City had indicated that 245 of the 280 former members had returned signed surplus sharing agreements. This response rate of 88% was well in excess of the threshold response of two-thirds established by written Commission policy regarding s. 8(1)(b)(iii) of the Regulation. The question remaining for the Commission was the degree to which this response was sufficiently well-informed, given the concerns expressed by the Respondents. Among these concerns were:

- a) the lack of legal counsel and actuarial advisors for the large majority of former members;
- b) the lack of funds available to former members to pay for such advice;

- c) the apparent absence of negotiations between the City and a collective bargaining agent or committee of former members; and
- d) written statements expressing the misgivings of about twenty former members who had signed surplus sharing agreements.

Offsetting these concerns was the fact that the City had made considerable effort to comply with and had in fact complied with the Commission's policy and the pertinent sections of the Act. In addition, the City had met with a Committee of former members in an effort to obtain their input regarding the surplus sharing process, and had held an information meeting on May 6, 1997 to communicate the process to all former members.

On balance, the Commission was of the view that notwithstanding the concerns expressed, the City had met the present requirements of the Act and Commission's policy relating to consent, and that their application should not be denied on this basis.

#### **2) Does the Plan provide for payment of surplus to the City on wind-up of the Plan?**

The Commission then turned its attention to whether the requirements of clause 79(3)(b) of the Act have been met.

#### **(3) The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless, ...**

- (b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan; ...

The City's Bylaw 1988-274 (the 1988 bylaw), which is the latest amendment to the plan and the trust agreement, provides for an explicit reversion of surplus to the City. The City has argued that the Plan is a statutory plan, and not a plan constituted under a trust and, therefore, the principles laid out in the Schmidt v. Air Products (1994), 115 D.L.R. (4th) 631(S.C.C.) case are not applicable. The Respondents have challenged this argument.

The current trust agreement applicable to the Plan was first established effective January 1, 1976. The provisions of the Plan included with that trust agreement reserved the right for reversion of the surplus to the City after all the benefit obligations under the Plan were provided for. The 1988 bylaw merely consolidates this right and makes a more explicit provision for the treatment of surplus.

Prior to 1976, and ever since the inception of the Plan, the pension benefits, under the Plan, were provided through contracts with insurance companies. Therefore, given the principles established under the Schmidt case, it would not appear that the pension monies were impressed with a trust prior to 1976.

In drawing our conclusion, we cannot ignore the policy intent of s. 8 of the Regulation. In this regard, we note the high level of consent of the former members after the City disclosed plan provisions and trust provisions as required by Commission policy.

We, therefore, conclude that the Plan provides for a reversion of surplus to the City and that we are satisfied that the requirements of clause 79(3)(b) have been met.

#### Conclusion

For these reasons, the application is granted, with four members of the panel consenting, two members dissenting. The Commission consents to the payment of surplus to the City in the amounts requested, consent not to be effective until the Applicant satisfies the Commission that all benefits, benefit enhancements including enhancements pursuant to the surplus sharing agreement and any other payments to which the former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Dated this 4th day of October 1997 at the City of Toronto, Province of Ontario.

C.S. (Kit) Moore, Chair  
Shiraz Y.M. Bharmal, Member  
Donald Collins, Member  
M. Elizabeth Greville, Member  
Judy Robinson, Member  
David E. Wires, Member









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# PENSION BULLETIN

December, 1998

VOLUME 7, ISSUE 1

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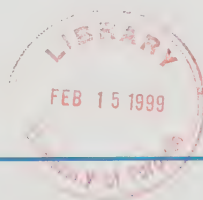
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*The Financial Services Commission of Ontario Act, 1997, the Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 (as amended), the terms of the pension plan and trust, if any, and the policies and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.*

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## General Announcements

### Financial Services Commission of Ontario

The Financial Services Commission of Ontario (FSCO) was created on July 1, 1998, as an arm's-length agency of the Ministry of Finance. FSCO integrates the operations of the former Ontario Insurance Commission, Pension Commission of Ontario, and Deposit Institutions Division of the Ministry of Finance. FSCO is comprised of three key parts: the Commission or "Board"; the Financial Services Tribunal (Tribunal); and the Superintendent and Staff.

As an integrated regulator, FSCO merges Ontario's regulatory activities governing pensions, insurance, trust companies, credit unions, caisses populaires, co-operatives and mortgage brokers, into one body. FSCO's mandate is to enhance consumer confidence and public trust in the regulated sectors; and also to make recommendations to the Minister on matters affecting the regulated sectors.

### The Board

The Board is the oversight body of FSCO, and is comprised of five members: The Chair, Eileen Gillese; two Vice-Chairs, Martha Milczynski and Colin McNairn; the Director of Arbitrations, Elisabeth Sachs; and the Superintendent of Financial Services, Dina Palozzi. As Superintendent, Ms. Palozzi is also CEO of FSCO. The Chair and Vice-Chairs of the Board are also the Chair and Vice-Chairs of the Tribunal.

The Board's role is to provide regulatory services that protect the public interest and enhance public confidence in the regulated sectors; make recommendations to the Minister of Finance (Minister) about the regulated sectors; provide resources necessary for the proper functioning of the Tribunal; recommend to the Minister and the Lieutenant Governor-in-Council fees and assessments to cover regulatory costs; establish conflict of interest guidelines for the Superintendent, the Board, Tribunal Members, and staff; publish and deliver to the Minister

an annual statement of priorities of FSCO, and provide an annual report.

### Financial Services Tribunal

The Financial Services Tribunal is an independent, adjudicative body composed of nine to 15 members (currently 13), including the Chair and two Vice-Chairs. The Tribunal has exclusive jurisdiction to exercise the powers conferred under the *Financial Services Commission of Ontario Act* and other *Acts* that confer powers on or assign duties to the Tribunal. It also has exclusive jurisdiction to determine all questions of fact or law that arise in any proceeding before it. As well, the Tribunal has authority to make rules for the practice and procedure to be observed in a proceeding before it; and to order a party to a proceeding before it to pay the costs of another party or the Tribunal's costs of the proceeding.

### Members of the Financial Services Tribunal

#### *Chair*

**Ms. Eileen E. Gillese** was appointed Chair of the Board and Chair of the Financial Services Tribunal on July 8, 1998, for a one year term. Dean of the Law Faculty of the University of Western Ontario, she has been a Professor of the Faculty of Law, University of Western Ontario, for the past 15 years. Dean Gillese teaches pension law, administrative law, trust law, property law, legal research and writing. Between 1991 and 1994, she was Associate Dean, Administration. She has also been Associate Dean, Academic.

First appointed a member of the Pension Commission of Ontario ("PCO") in 1988, Dean Gillese became Vice-Chair of the PCO in 1989 and served as Chair of the PCO from 1994 to 1996.

Dean Gillese has received the 3M Fellowship for Excellence in Teaching, the University of Western Ontario's Edward G. Pleva Gold Medal for Excellence



in Teaching, and the Excellence in Teaching Award from the Legal Society of the Faculty of Law. Prior to joining academia, she was a lawyer with Reynolds, Mirth and Coté.

A Rhodes Scholar, Dean Gillese graduated from Oxford University with a B.C.L. First Class in 1980 and a B.A. Hons. Jurisprudence in 1979. In 1980 she received the Wadham College Prize for Academic Distinction. She also obtained a Bachelor of Commerce with distinction from the University of Alberta where she was Vice-President, Finance and Administration of the Students' Union.

#### *Vice-Chairs*

**Ms. Martha Milczynski** was appointed Vice-Chair of the Board and Vice-Chair of the Financial Services Tribunal on July 8, 1998, for a three year term. Ms. Milczynski is a partner in the law firm of Gowling, Strathy & Henderson. She holds a B.A., University of Toronto, 1981, an LL.B. from Osgoode Hall Law School, 1987, and was called to the Bar of Ontario in 1989. Ms. Milczynski specializes in the area of pensions and benefits, and also practices labour and employment law and litigation. She was a member of the PCO's Legal Advisory Committee, a past member of the Executive of the Pension and Benefits Section of the Canadian Bar Association of Ontario ("CBAO") and is currently a member of the Canadian Pension and Benefits Institute and the International Foundation of Employee Benefits. Ms. Milczynski is on the editorial board of *Pension Planning* (Federated Press) and has been a contributor to the CBAO Pension & Benefits Newsletter. In addition, she has written a number of articles on pension matters, with a focus on fiduciary duties and liabilities.

**Mr. Colin McNairn** was appointed Vice-Chair of the Board and Vice-Chair of the Financial Services Tribunal on July 8, 1998, for a three year term. A partner in the Toronto-based law firm of Fraser &

Beatty, Mr. McNairn practices corporate and commercial law and specializes in financial services with particular reference to insurance. He holds a B.A. from McMaster University, an LL.B. from the University of Western Ontario and an LL.M. from Harvard University.

Mr. McNairn was a Professor of Law at the University of Toronto from 1967 until he joined Fraser & Beatty in 1975. He has authored and co-authored books on constitutional law and freedom of information and privacy and is the editor of the annual *Consolidated Insurance Companies Act of Canada, Regulations and Guidelines* (Carswell).

Mr. McNairn served as Director of the Ontario Insurance Legislation Review Project, whose report "Insuring for the Future" was published in 1991 and as Research Director for the Parliamentary Committee on Equality Rights, whose report "Equality for All" was published in 1985.

#### *Members*

**Ms. Darcie L. Beggs** continues her appointment to the PCO as a member of the Financial Services Tribunal. Originally appointed a member of the PCO on December 6, 1991, for a three year term, she was re-appointed on December 6, 1994, for a three year term, and on December 6, 1997 for a one year term. Ms. Beggs is Senior Research Officer, Pension and Benefits Specialist with the Canadian Union of Public Employees (CUPE).

**Ms. Kathryn M. Bush** continues her appointment to the PCO as a member of the Financial Services Tribunal. Originally appointed a member of the PCO on June 17, 1993, for a three year term, Ms. Bush was re-appointed for a three year term on June 17, 1996. Ms. Bush was appointed Vice-Chair of the PCO on May 14, 1997. Ms. Bush is a lawyer with the firm Blake, Cassels & Graydon. Her practice centres on the areas of pensions and taxation.





**Mr. Louis Erlichman** continues his appointment to the PCO as a member of the Financial Services Tribunal. He was appointed a member of the PCO on June 17, 1998, for a six month term. Mr. Erlichman has been Canadian Research Director for the International Association of Machinists and Aerospace Workers ("IAM") since 1978. The IAM represents 55,000 Canadian workers in a wide range of Canadian industries. Mr. Erlichman works out of the IAM's National Office in Ottawa. He provides research support on economic and collective bargaining issues, pensions, benefits and other matters to IAM locals and staff across the country.

From 1987 to 1995, Mr. Erlichman was Chairman of the Canada Pension Plan Advisory Board, which advised the responsible federal Minister on issues related to the Canada Pension Plan. He is a graduate in Economics from the University of Toronto and the London School of Economics. Before joining the IAM, Mr. Erlichman worked for the Canadian federal government, and in Uganda and Tanzania as an economic adviser.

**Mr. Bill Forbes** continues his appointment to the PCO as a member of the Financial Services Tribunal. He was appointed a member of the PCO on March 25, 1998, for a three year term. Since September, 1991, Mr. Forbes has been Director, Pensions, Investments & Insurance at Queen's University in Kingston. Prior to that, he was a Vice President at Towers Perrin in the Toronto office. Mr. Forbes is a Fellow of the Canadian Institute of Actuaries and a Chartered Financial Analyst.

**Ms. Elizabeth Greville** continues her appointment to the PCO as a member of the Financial Services Tribunal. She was appointed a member of the PCO on February 8, 1996, for a three year term. Ms. Greville is a senior consultant with Towers Perrin. Her previous positions included Assistant General Counsel, Pension and Finance, at Ontario Hydro, and a Principal of William M. Mercer Ltd., both in Toronto and London,

UK. Ms. Greville holds a B.A. (Hons) from the University of British Columbia, and an LL.B from Osgoode Hall Law School.

**Mr. Joseph P. Martin** was appointed a member of the Financial Services Tribunal on July 8, 1998, for a three year term. Mr. Martin graduated from the University of Western Ontario with an Honours Business degree; he earned a CA degree with Clarkson Gordon & Co. Mr. Martin was employed in the food business for 12 years in various capacities ranging from financial management to general management, including that of Vice President of Consumer Products for the Canadian operations of a large multi-national company. Employed for 18 years with The Co-operators Group of Companies, as Chief Financial Officer and Vice President of Finance and latterly as Chief Executive Officer; Mr. Martin served for several years as Chairman of the Board of Trustees of The Co-operators Pension Plan, a defined contribution plan. He served as a Director on Insurance Industry boards - The Facility Association and the Property and Casualty Insurance Corporation. Mr. Martin represented Canada on the Board of the International Co-operative and Mutual Insurance Federation, the umbrella organization for co-operative insurance organizations from around the world. He has been involved with the broader co-operative and credit union movement, including terms as a Director of Co-operative Trust of Canada and of Credit Union Central system. Now retired, Mr. Martin sits as the outside trustee for a co-operative defined benefit pension plan.

**Mr. Christopher (Kit) S. Moore** was appointed a member of the Financial Services Tribunal on July 1, 1998, for a three year term. Mr. Moore served as Chair of the PCO from March 24, 1997, to June 30, 1998. He was first appointed a member of the PCO on June 8, 1994, coincident with his retirement as a senior pension actuary with a national consulting firm in Canada. His prior positions included pension consulting responsibilities with another large



consulting firm in Canada, and a 20-year career covering actuarial positions in a major Canadian insurance company. Mr. Moore is Past President of the Canadian Institute of Actuaries and continues to contribute actively within the profession. He has taken a particular interest in the debate on the future of the Canada Pension Plan.

**Ms. Judith E. Robinson** continues her appointment to the PCO as a member of the Financial Services Tribunal. She was appointed a member of the PCO on May 14, 1997, for a three year term. Ms. Robinson has been with George Weston Limited since 1980, currently as Senior Director, Pension and Benefits, and serves as trustee of the Canadian Commercial Workers Industry Pension Plan. She was a pension consultant with Wm. M. Mercer Ltd., and worked in the actuarial and investment departments at the Manufacturers' Life Insurance Company.

**Ms. Joyce A. Stephenson** continues her appointment to the PCO as a member of the Financial Services Tribunal. She was appointed a member of the PCO on October 28, 1992, for a three year term. She was reappointed on October 29, 1995, for a three year term and again on November 4, 1998. Ms. Stephenson is Director, Pension and Benefits, with Maple Leaf Foods Inc. Ms. Stephenson is Past Director of the Association of Canadian Pension Management, a Member of the Ontario Regional Council of the Canadian Pension and Benefits Institute and a Member of the Toronto Board of Trade.

**Mr. David E. Wires** continues his appointment to the PCO as a member of the Financial Services Tribunal. He was appointed a member of the PCO on February 26, 1997, for a three year term. Mr. Wires is a partner of the Toronto law firm McCague, Wires, Peacock, Borlack, McInnis & Lloyd. He practises as an advocate before the Ontario Court (General Division), the Ontario Court of Appeal, Ontario administrative tribunals, and commercial arbitration panels.

## Superintendent and Staff

The Superintendent of Financial Services administers and enforces the *Financial Services Commission of Ontario Act, 1997* and all other *Acts* that confer powers on or assign duties to the Superintendent. The Superintendent exercises the powers and duties conferred upon the Superintendent by these *Acts*; supervises the regulated sectors and is responsible for the financial and administrative affairs of FSCO. In carrying out her responsibilities the Superintendent is supported by a staff of approximately 400.

## Pension Staff

FSCO has a streamlined staff structure which delivers co-ordinated regulation, lower compliance costs, improved service and stronger consumer protection. Common areas have been combined for greater efficiency and ease of regulation. At the same time, however, the specialized expertise that has been developed in the program areas, has been preserved.

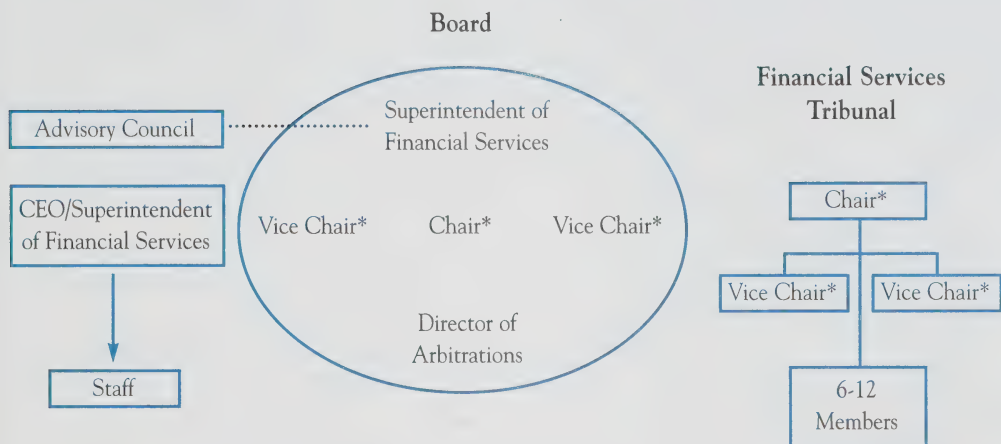
For example, the Pension Plans Branch has remained intact, with Pauline Dawson as Director. The Legal Services Branch includes a distinct pension counsel unit. And, Pension Policy has been maintained as a distinct unit within the Policy and Communications Branch, with Nurez Jiwani as Director.

## Staffing Changes

There have been some staffing changes within the Pension Plans Branch. David Gordon has replaced Rick Kennedy as Senior Technical Consultant; David can be reached at 416-226-7795. Marilyn Wang is now the Senior Manager of the Operations Branch; Marilyn can be reached at 416-226-7830. Nancy Kelly is the ASPIRE Project Co-ordinator and can be reached at 416-226-7817.



## Financial Services Commission of Ontario



\* the Chair and Vice Chairs of the Board are also the Chair and Vice Chairs of the Tribunal



## **FSCO Website - [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca)**

The PCO had established a web presence in early 1998. Since then, a combined FSCO website has been established to keep all stakeholders informed and up-to-date, and provide consumers with easy access to information on the sectors regulated by FSCO.

## **ASPIRE**

In 1995 the Pension Commission of Ontario launched a project known as ASPIRE – Affordable Strategies for Process Innovation in Regulation – a multi-year initiative to restructure the pension regulatory process by streamlining procedures and capitalizing on information technology. The long-term objective is to use computerized screening to identify high-risk situations requiring close investigation. Ultimately, plan administrators will have the option of filing forms and other documents electronically, and plan members will have electronic access to FSCO services and information. In the short term, FSCO will continue implementation by redesigning forms to collect only essential information and by proceeding with the selection of a technology vendor for the project.

ASPIRE has tremendous significance for the pension industry. Through innovative technology, customer service will be improved and the cost of service delivery will be reduced.

Some elements of the ASPIRE redesign have been presented to industry representatives. During August and September, 1998, industry representatives were invited to attend presentations for the ASPIRE project. The presentation and comments from participants will be available for review on FSCO's website.

Additional comments can be submitted to:

Nancy Kelly  
ASPIRE Project Co-ordinator  
[nkelly@fSCO.gov.on.ca](mailto:nkelly@fSCO.gov.on.ca)

## **New Address**

Effective November 23, 1998, the Pension Plans Branch is located at 5160 Yonge Street, 4th floor, Toronto, Ontario M2N 6L9.





## Contacts for Plan Specific Enquiries

Allocations	Officer	Telephone
(DB) Agriculture/Mining/Construction plans (DC) M plans	David Allan	226-7803
(DB) Finance plans (DC) # and CAA-CHA plans	Andrew Gibbons	226-7811
(DB) Public Admin./Printing/Publishing plans (DC) F plans	Penny McIlraith	226-7822
(DB) Trade/Commercial plans (DC) T plans	Stanley Chan	226-7806
(DB) Rubber/Plastics	Gino Marandola	226-7820
(DB) Transportation/Equipment/Electrical plans (DC) W, X, Y and Z plans	Larry Martello	226-7821
(DB) Food/Beverages plans (DC) L and N plans	Irene Mook-Sang	226-7824
(DB) Textiles/Paper plans (DC) S plans	Jaen Pringi	226-7826
(DB) Primary Metals/Machinery plans (DC) D and O plans	Rosemine Jiwa-Jutha	226-7816
(DB) Non-Metallic/Chemicals plans (DC) G and I plans	Lynda Ellis	226-7808
(DB) A-BRI plans (DC) J plans	Rosemine Jiwa-Jutha	226-7816
(DB) BRO-CONR plans (DC) U plans	Jaen Pringi	226-7826
(DB) Cons-DS plans (DC) A plans	Irene Mook-Sang	226-7824
(DB) DU-FZZ plans (DC) P plans	Gwen Gignac	226-7812
(DB) G-HAZ plans (DC) H plans	Sharon Polischuk	226-7819
(DB) HEA-KMZ plans (DC) CHB-CZZ	David Allan	226-7803
(DB) KNA-MOQ plans (DC) B plans	Andrew Gibbons	226-7811
(DB) MOR-PNZ plans (DC) K plans	Gino Marandola	226-7820
(DB) POL-SHE plans (DC) R plans	Penny McIlraith	226-7822
(DB) SHI-TORO plans (DC) E plans	Stanley Chan	226-7806
(DB) TORR - #s (DC) Q&V	Gino Marandola	226-7820



## Joint Audits

FSCO and Revenue Canada are initiating a program of conducting joint audits. Under the program, examiners from both Revenue Canada and FSCO will conduct their audits simultaneously while visiting an employer's office. Due to differing regulatory concerns between Revenue Canada and FSCO, separate audit reports will be prepared and each organization will independently carry out any follow up activities to resolve identified compliance concerns.

To date three test audits have been initiated to test the program, two of which have been completed. An independent accounting firm was retained to assist and evaluate the program. FSCO is pleased with the test results to date. The accounting firm was also asked to provide comments on the adequacy of the audit program. They concluded that, "The programme is well organized. It separates compliance between the Income Tax Act and the Pension Benefits Act. It also separates testing into the four main risk areas namely funding, benefits calculated, benefits paid and asset management."

## Advisory Committees

### *FSCO Pension Investment Advisory Committee*

(chair vacant)

Jim Franks,  
Frank Russell Canada Limited

Bruce J. Grantier,  
Scotia Investment Management Limited

Claire O. Kyle,  
TD Investments

Thomas E. Phelps,  
Noranda Inc.

Robert R. Rafos,  
Newcastle Capital Management Inc.

Marc L. Rouillard,  
SEI Financial Services Limited

Alfred G. Wirth,  
Wirth Associates Inc.

### *FSCO Actuarial Advisory Committee*

(chair vacant)

Peter Beca,  
MLH + A Inc.

Art Bicknell,  
Sun Life Assurance Company of Canada

Sylvie Charest,  
William M. Mercer Limited

K. Paul Duxbury,  
The Segal Company Limited

Karen Figuerido,  
Towers Perrin

Patrick F. Flanagan,  
Eckler Partners Limited

Karen G. Long,  
KPMG Actuarial, Benefits & Compensation Inc.

Kem Majid,  
Watson Wyatt

Jean-Claude Primeau,  
William M. Mercer Limited

Rob Rosenblat,  
AON Consulting Inc.

Alnasir H. Samji,  
Towers Perrin

Allan H. Shapira,  
Hewitt Associates

### *FSCO Accounting and Auditing Advisory Committee*

Don Wilkinson, Chair  
Deloitte & Touche



Richard Farrar,  
Doane Raymond

Wayne Gladstone,  
O. M. E. R. S.

Marie Holland,  
KPMG

Donald W. Hunter,  
Price Waterhouse

Douglas Isaac,  
Coopers & Lybrand

Neil Jacoby,  
Aurion Capital Management Ltd.

Ron Koehli,  
The Institute of Chartered Accountants

Bryan Kogut,  
BDO Dunwoody Ward Mallette

Greg P. Shields,  
The Canadian Institute of Chartered Accountants

Kenneth J. Vallillee,  
Arthur Andersen & Co. SC

Karen A. Yule,  
Ernst & Young

#### *FSCO Legal Advisory Committee*

Dona Campbell, Chair  
Sack Goldblatt Mitchell

Leigh Ann Bastien  
William M. Mercer Limited

Jeremy Forgie,  
Blake Cassels & Graydon

Peter K. Fritze,  
Tory, Tory, Deslauriers & Binnington

Murray Gold,  
Koskie & Minsky

Bernard A. Hanson,  
Cavalluzzo Hayes Shilton McIntyre & Cornish

Priscilla H. Healy,  
Towers, Perrin

Rose Mark,  
State Street Trust Company Canada

Gary F. Nachshen  
Stikeman, Elliott

Mary M. Picard  
Fraser & Beatty

Clifton P. Prophet  
Gowling, Strathy and Henderson

Douglas Rienzo,  
Osler, Hoskin and Harcourt

#### **Volunteers Wanted for Consultation Roster**

To all administrators and sponsors of pension plans registered with the Superintendent of Financial Services:

We are looking for a limited number of pension plan administrators and sponsors to submit their names for a consultation roster.

Individuals on the roster would be called upon from time to time to participate in consultations, including the review of draft forms, guidelines and other documents.

It is hoped that this roster will facilitate timely and efficient consultation with interested plan administrators and sponsors on selected projects.

If you are interested in participating, please contact Mathew Ou, Senior Policy Analyst of the Financial Services Commission of Ontario's Pension Policy Unit at (416) 226-7772.



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## Legislative Changes / Regulatory Policies

SECTION	Procedures - Hearings
INDEX NO.	P520-784
TITLE	Continuation of Proceedings for Certain Applications Under the Current PBA once the <i>Financial Services Commission of Ontario Act, 1997</i> (FSCO) comes into Force.
APPROVED BY	The Pension Commission of Ontario
PUBLISHED	Mail Distribution (Apr. 24/98)
EFFECTIVE DATE	March 26, 1998

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It is anticipated that the FSCO Act (Bill 140) will come into force on July 1, 1998. Section 213(2) of that Act reads as follows:

Despite subsection (1), the Pension Commission of Ontario, as it was constituted immediately before this section comes into force, shall continue to exist for the sole purpose of concluding and disposing of hearings and proceedings that, before the day this section comes into force, were commenced before the Commission but not concluded.

Once Section 213(2) is in force, any proceeding commenced prior to July 1, 1998 before the Pension Commission tribunal under the current PBA will continue to be dealt with by the Pension Commission as it exists prior to July 1, 1998.

With respect to matters where the Pension Commission tribunal is the first instance decision-maker under the current PBA, the Pension Commission will consider a proceeding to have been commenced prior to July 1, 1998 if the following action has been taken:





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**Type of Proceeding Under  
Current PBA**

**Proceeding Commences on Date That Action Described Below  
is Taken, prior to full Proclamation of Bill 140\***

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**I. Application for consent to with-  
draw surplus (section 78, PBA)**

**a) wound-up plan**

The employer files its written notice of the application with the Commission Registrar, prior to transmitting it pursuant to s. 78(2). The proceeding commences on the date the notice of application is received by the Registrar, as evidenced by the Registrar's date stamp.

The employer must file its complete application, including evidence that section 78(2) has been satisfied, with the Commission Registrar within one year after commencing the proceeding, as evidenced by the Commission Registrar's date stamp on the initial notice of application.

**b) continuing plan**

Same as above.

**II. Application for consent to refund  
of member or former member  
contributions (sections 63(7) &  
(8), PBA)**

The plan administrator files its written application with the Commission Registrar. The proceeding commences on the date the application is received by the Registrar, as evidenced by the Registrar's date stamp.

**III. Application for:**

**a) a declaration that the PBGF  
applies to a pension plan  
(sections 83 & 90(1)(a), PBA)**

The plan administrator files its written application with the Commission Registrar. The proceeding commences on the date the application is received by the Registrar, as evidenced by the Registrar's date stamp.

**b) an allocation from the Guarantee  
Fund (Reg. 909, ss. 34(7))**

The plan administrator files its written application with the Commission Registrar for an allocation from the Guarantee Fund with the Commission. The proceeding commences on the date the application is received by the Registrar, as evidenced by the Registrar's date stamp.

**IV. Application for an order requiring  
administrator to take specific  
action respecting a report  
(sections 88 & 90(1)(b), PBA)**

Any person affected by the report files a written application with the Commission Registrar. The proceeding commences on the date the application is received by the Registrar, as evidenced by the Registrar's date stamp.

**V. Application for consent to refund  
of overpayment or expenses  
(ss. 78(4), PBA)**

The employer files its written application with the Commission Registrar. The proceeding commences on the date the application is received by the Registrar, as evidenced by the Registrar's date stamp.

\* All requirements of the PBA, Regulation 909 and Commission policies as they existed prior to July 1, 1998 remain in force for purposes of these proceedings.



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SECTION	Superintendent of Financial Services
INDEX NO.	S850-001
TITLE	General Announcement: The Status of Published PCO Policies under FSCO
APPROVED BY	Superintendent of Financial Services
EFFECTIVE DATE	July 1, 1998

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## Introduction

The *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 ("FSCO Act"), which was fully proclaimed on July 1, 1998, amends the *Pension Benefits Act*, R.S.O. 1990, c.P.8 ("PBA"). The FSCO Act replaces the Pension Commission of Ontario ("PCO") with the Financial Services Commission of Ontario ("FSCO"). The FSCO Act also establishes the Superintendent of Financial Services ("Superintendent") in place of the Superintendent of Pensions.

The PBA is further amended to provide that all decisions of first instance will be made by the Superintendent, including those decisions previously made by the Pension Commission.

This policy addresses the status of existing PCO policies, given the proclamation of the FSCO Act.

## Status of Existing PCO Policies

1. All existing PCO policies remain in effect. If an existing policy conflicts with the FSCO Act, the policy must be read to be consistent with the FSCO Act. All policies published by the PCO will be reviewed, confirmed or updated as required.
2. Except as noted in point 3, references in existing policies to "Pension Commission of Ontario" should be read as "Superintendent of Financial Services".
3. The exceptions to point 2 are the Pension Commission's procedures related to its hearing activities. Under the FSCO Act, hearings will be conducted by the Financial Services Tribunal ("Tribunal") and the Tribunal is publishing its own practices and procedures.

**Note:** *While this policy is meant to be a guideline, the Superintendent is not bound by it. Furthermore, the Superintendent is not bound by information or advice given by FSCO staff. This policy does not alter any of the requirements of the FSCO Act, PBA or Regulation 909, R.R.O. 1990 ("Regulation"). Where this policy conflicts with the FSCO Act, PBA or Regulation, the FSCO Act, PBA or Regulation govern.*



SECTION	Superintendent of Financial Services
INDEX NO.	S850-100
TITLE	Delegation of the Superintendent's Authorities – Financial Services Commission of Ontario Act, 1997, ss. 5(3)
APPROVED BY	Superintendent of Financial Services
EFFECTIVE DATE	July 1, 1998

## Introduction

The *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 ("FSCO Act"), which was fully proclaimed on July 1, 1998, amends the *Pension Benefits Act*, R.S.O. 1990, c.P.8 ("PBA"). The FSCO Act replaces the Pension Commission of Ontario with the Financial Services Commission of Ontario ("FSCO"). The FSCO Act also establishes the Superintendent of Financial Services ("Superintendent") in place of the Superintendent of Pensions.

The PBA is further amended to provide that all decisions of first instance will be made by the Superintendent, including those decisions previously made by the Pension Commission.

Under the FSCO Act, the Superintendent is authorized to delegate any power or duty, including the duty to make decisions or proposed decisions on applications submitted to the Superintendent. Schedule A of this policy sets out the delegations of the Superintendent's powers and duties pursuant to subsection 5(3) of the FSCO Act.

**Note:** While this policy is meant to be a guideline, the Superintendent is not bound by it. Furthermore, the Superintendent is not bound by information or advice given by FSCO staff. This policy does not alter any of the requirements of the FSCO Act, PBA or Regulation 909, R.R.O. 1990 ("Regulation"). Where this policy conflicts with the FSCO Act, PBA or Regulation, the FSCO Act, PBA or Regulation govern.

## Delegation of Authority

In order to provide for the efficient administration of the PBA, the Superintendent is delegating a number of the Superintendent's powers and duties. This policy contemplates two levels to which the Superintendent's powers and duties may be delegated:

1. Director of the Pension Plans Branch.
2. Staff: Persons holding the position of Pension Officer; Co-ordinator, Insolvencies; or Consultant in the Pension Plans Branch. The authorities delegated to Staff are also delegated to the Director of the Pension Plans Branch.



## Exercise of Non-Delegated Authorities

A Review Committee has been established that will review those matters the Superintendent will decide.

The Review Committee consists of the Director of the Pension Plans Branch and the Director of the Policy and Communications Branch, with legal counsel acting as an advisor. The Review Committee will make a recommendation to the Superintendent.

The Superintendent will review all submissions and related documents, including the Review Committee's recommendation, and form her own conclusions.

These conclusions will be reflected in the Superintendent's Notice of Proposal or final decision, as the case may be.





## SCHEDULE A

### Powers Delegated to Director of the Pension Plans Branch of the Financial Services Commission of Ontario

#### Statutory Authority Description

section 15	Issue acknowledgements of applications for registration of pension plans
section 16	Issue certificates of registration for pension plans
section 17	Issue notices of registration for amendments to pension plans
section 26(1)	Require a pension plan administrator to transmit written notice containing an explanation of an adverse amendment
section 26(2)	Register an adverse amendment or revised amendment following the expiry of 45 days after the date the last notice sent in accordance with s. 26(1) was transmitted
section 42(7)	Approve payment under s. 42(1) & (7), where no terms or conditions are imposed
section 43(3)	Approve purchase under s. 43(1) & (2), where no terms or conditions are imposed
section 70	Approve wind-up report
section 70(3)	Approve payment out of a pension fund where notice of proposal to wind up the plan has been given
section 71(1)	Appoint administrator where pension plan does not have one
section 80(4)	Approve a transfer of assets from one pension fund to the pension fund of the pension plan provided by the successor employer, where no terms or conditions are imposed
section 81(4)	Approve a transfer of assets from the pension fund of the original pension plan to the pension fund of the new pension plan, where no terms or conditions are imposed
section 81(8)	Approve a transfer of assets from one pension fund to another pension fund, where no terms or conditions are imposed
section 86(3)	Register notice of lien and charge in the proper land registry office on the real property of an employer(s) who provided a pension plan for amounts paid out of the Guarantee Fund as a result of the wind up, in whole or in part, of the pension plan
section 89(7)	Carry out the proposal stated in the notice of proposal, when no hearing is requested within the time limit
section 98(1)	Require an employer, administrator or any other person to provide information, within the required time period, to determine if the PBA and Regulation are being complied with
section 105	Extend any procedural time limit
section 112(3)	Authorize the giving of notices or documents or reasonable notice of the contents of notices or documents to persons by public advertisement or otherwise where it is not reasonable to give the notice or document to all or any of the persons individually



## SCHEDULE B

Persons holding the Position of Pension Officer; Co-ordinator, Insolvencies; or Consultant  
in the Pension Plans Branch, Financial Services Commission of Ontario

### Statutory Authority Description

section 15	Issue acknowledgements of applications for registration of pension plans
section 16	Issue certificates of registration for pension plans
section 17	Issue notices of registration for amendments to pension plans
section 26(2)	Register an adverse amendment or revised amendment following the expiry of 45 days after the date the last notice sent in accordance with subsection 26(1) was transmitted



SECTION	Superintendent of Financial Services
INDEX NO.	S850-200
TITLE	Filing Applications with the Superintendent of Financial Services - PBA ss. 63(7) & (8), 78, 79, 83, 88, 89, as amended - Regulation 909 s. 34(7)
APPROVED BY	Superintendent of Financial Services
EFFECTIVE DATE	July 1, 1998

## Introduction

The *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 ("FSCO Act"), which was fully proclaimed on July 1, 1998, amends the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 ("PBA"). The FSCO Act replaces the Pension Commission of Ontario ("PCO") with the Financial Services Commission of Ontario ("FSCO"). The FSCO Act also establishes the Superintendent of Financial Services ("Superintendent") in place of the Superintendent of Pensions.

The FSCO Act makes several important amendments to the PBA in relation to certain applications. This policy outlines the general procedure for filing six types of applications with the Superintendent under the PBA. It concerns only those applications that were decided by the Pension Commission in the first instance before the full proclamation of the FSCO Act.

**Note:** While this policy is meant to be a guideline, the Superintendent is not bound by it. Furthermore, the Superintendent is not bound by information or advice given by FSCO staff. This policy does not alter any of the requirements of the FSCO Act, PBA or Regulation 909, R.R.O. 1990 ("Regulation"). Where this policy conflicts with the FSCO Act, PBA or Regulation, the FSCO Act, PBA or Regulation govern.

## Status of Applications before the PCO prior to July 1, 1998

1. Subsection 213(2) of the FSCO Act provides that the Pension Commission, as it existed prior to July 1, 1998, "shall continue to exist for the sole purpose of concluding and disposing of hearings and proceedings that, before the day this section comes into force, were commenced before the Commission but not concluded." Applicants should refer to policy P520-784 ("Continuation of Proceedings for Certain Applications Under the Current PBA once the *Financial Services Commission of Ontario Act, 1997* comes into Force").

## Status of existing PCO policies

2. Over the years, the PCO has published policies that address these six types of applications. Although the FSCO Act changes decision-making processes, the compliance requirements for the applications have not changed. An applicant must satisfy the Superintendent that the application complies with the PBA and Regulation. The applicant should also demonstrate compliance with the relevant policies published by the former PCO and FSCO.



3. All references to "Pension Commission of Ontario" or "Superintendent of Pensions" in the policies that address these six types of applications should now be read as "Superintendent of Financial Services." Applicants should refer to policy S850-001 ("General Announcement: The Status of Published PCO Policies under FSCO")
4. Policies published from 1996 onwards are available on the Telix (BBS) system. The policies will soon be available on the FSCO website. The Internet address is <<http://www.fSCO.gov.on.ca>>.
6. The Superintendent's proposed decision will be served on the applicant and any other person, as provided in the PBA, by way of a notice of proposal with written reasons.
7. A person on whom the notice of proposal is served is entitled to a hearing before the Financial Services Tribunal ("Tribunal") under s. 89(6) if the person delivers to the Tribunal written notice requiring a hearing within 30 days after being served with the notice of proposal.
8. The Superintendent has the authority to consent to the following applications without serving a notice of proposal, if the consent is not subject to terms or conditions:
  - a) Application to refund member or former member contributions ss. 63(7) & (8)
  - b) Application for an allocation from the PBGF s. 34(7) of the Regulation

### Applications to the Superintendent

In this part, all section numbers refer to the PBA unless otherwise noted.

5. For the following applications, the Superintendent has the authority to propose (i) to consent or refuse to consent or (ii) to make an order or refuse to make an order, by serving a notice of proposal:
  - a) Application by an employer for consent to pay it the amount it overpaid into the pension fund or an amount it paid that should have been paid out of the pension fund ss. 78(4), 89(3.2)
  - b) Application by an employer for consent to pay it surplus from a continuing or wound-up plan ss. 78, 79, 89(3.1)
  - c) Application for an order declaring that the PBGF applies to a pension plan ss. 83, 89(2)(d.1)
  - d) Application for an order requiring the administrator to take action respecting a report ss. 88, 89(2)(f)
9. If the Superintendent proposes i) to refuse to consent; or ii) to attach terms or conditions to a decision described in paragraph 8, above, the Superintendent will serve a notice of proposal, as required by s. 89(4), which will include written reasons.
10. The notice of proposal will be served on the applicant and any other person, as provided in the PBA.
11. A person on whom the notice of proposal is served is entitled to a hearing before the Tribunal under s. 89(6) if the person delivers to the Tribunal written notice requiring a hearing within 30 days after being served with the notice of proposal.





## Principles of the Decision-Making Process

12. The Superintendent's decisions or proposed decisions will comply with the PBA and Regulation.
13. The following principles will guide the Superintendent's decision-making:
  - a) **It will be effective and efficient.**  
It will include appropriate time frames.
  - b) **It will be fair and equitable.**  
Decisions will be made on an impartial basis by the Superintendent or a delegate. Applicants should refer to policy S850-100 ("Delegation of the Superintendent's Authorities").
  - c) **It will display integrity.**  
Decisions will be based on an objective and consistent application of the legislation.
  - d) **It will be open and transparent.**  
The application process, the decision-maker and the time frames for decisions will be published.

## The Application Process

### *General*

14. a) The onus is on the applicant to satisfy the Superintendent that an application complies with the requirements of the PBA and Regulation. The applicant should also demonstrate compliance with the relevant policies. It is the applicant's responsibility to consider whether plan-specific circumstances warrant the inclusion of additional information or documentation supporting the application.
  - b) The applicant is required to provide notice to members, former members or other persons as required by the PBA, Regulation and policies. The applicant should also provide notice to the collective bargaining agent(s) that represents the members, former members or other persons affected by the application. The onus is on the applicant to satisfy the Superintendent that full and fair notice has been given.
15. The format required for various applications, as described in existing policies, remains unchanged. Applicants should refer to the relevant policies for assistance.

### *Required Documents and Acknowledgment of Receipt*

16. Applicants must file seven (7) copies of the application and any supporting materials.
17. The application, including attachments, should be submitted on 8-1/2" by 11" paper (subject to legibility).
18. These applications should be sent by first class mail or delivered to:

Superintendent of Financial Services  
Financial Services Commission of Ontario  
5160 Yonge Street, Box 85  
Toronto, ON M2N 6L9

19. Upon receipt, the application will be acknowledged.



### *Written Representations*

20. Upon receipt, a written representation made by any person will be acknowledged.

### *Staff Review*

**21. Technical and professional support ensures quality control:**

These applications will be reviewed by a Pension Officer or Insolvency Coordinator in the Pension Plans Branch ("pension staff"), with appropriate technical and professional support.

**22. Pension staff reviews application for completeness:**

- a) If pension staff believe that an application is incomplete, they will advise the applicant in writing. The applicant must submit seven (7) copies of the documentation required to complete the application.
- b) The review of the application will not proceed until the earlier of the date when:
  - (i) pension staff receive all of the information requested
  - (ii) the applicant submits a written request asking that the application proceed as is (i.e., without submitting the additional information staff have requested); or
  - (iii) the time period for a response, as set out in the letter from pension staff, expires.

**23. Pension staff review of the application for compliance:**

- a) Pension staff will review the application and any supporting documentation for compliance with the PBA and Regulation.
- b) If any compliance concerns are identified by staff, the applicant and any person who has made written representations will receive a letter outlining the concerns.

- c) The letter will specify the time period which the applicant and any other person have to provide a written response, if they wish to have the response considered in the decision-making. Seven (7) copies of the written response must be submitted to the Superintendent.

### *Consideration by the Superintendent*

24. a) Following a review of the application and all related materials, the Superintendent will issue a proposed or final decision, as provided in the PBA.
- b) All decisions, proposed or final, with reasons will be communicated to the applicant and any other person, as provided in the PBA.

### *Time Line*

25. The decision or notice of the proposed decision will be issued within 90 days after:
- a) a complete application is received; or
  - b) the applicant submits a written request asking that the application proceed as is, provided that the applicant complies with the time frames, as specified in pension staff's correspondence.

### *Hearings in respect of a proposed decision of the Superintendent*

26. A proposed decision is subject to a hearing before the Tribunal if a person on whom the notice of proposal is served asks the Tribunal for a hearing within 30 days after being served with the notice of proposal (PBA, s. 89(6)).

### *Finalization of the Proposed Decision*

27. If no notice requiring a hearing is received within the specified time frame, the Superintendent may carry out the proposed decision.



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SECTION	Surplus
INDEX NO.	S900-505
TITLE	Levels of Consent Required Pursuant to Section 10.1 of Regulation 909
APPROVED BY	The Pension Commission of Ontario
EFFECTIVE DATE	March, 1998

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**Q.** Where an employer applies under section 79 of the Act for the payment of surplus from a continuing pension plan, does section 10.1 of Regulation 909 have the effect of reducing the level of consent required from the pensioners under section 10 of the Regulation from 100% to 90%?

**A.** No. Under subsection 10(2) of Regulation 909, 100% of the pensioners must consent (i.e. former members in receipt of a pension payable from the pension fund). However, pursuant to subsections 10.1(1) and 10.1(3), if the Superintendent certifies to the Commission that the employer has obtained the consent of 90% of the pensioners to the terms of the surplus payment, then the court appointed representative may consent on behalf of those pensioners who have neither consented to nor objected to the terms of the surplus payment.

In addition, subsection 10(2) requires the consent of :

- (i) 100% of the plan members, and
- (ii) 100% of all the other persons entitled to receive benefits under the plan, such as former members who are not pensioners

(see definition of “former member”) or other persons who may be beneficiaries under the plan (such as spouses in certain circumstances).

Regulation 10.1 only allows the court appointed representative to consent on behalf of the pensioners. It does not allow the court appointed representative to consent on behalf of the “plan members” or other persons.

**Q.** Where an employer applies under section 79 of the Act for the payment of surplus from a wound-up plan, does section 10.1 of Regulation 909 increase the level of consent required from plan members under clause 8(1)(b)(ii) of the Regulation from 2/3rds to 90%?

**A.** No. Section 10.1 does not alter the level of consent required under clause 8(1)(b)(ii). Nor does it give the court appointed representative the authority to consent on behalf of plan members. Therefore, the consent required from plan members under clause 8(1)(b)(ii) is still 2/3rds.



- Q. Where an employer applies under section 79 of the Act for the payment of surplus from a wound-up plan, does section 10.1 of Regulation 909 alter the level of consent currently required from “former members and other persons” (excluding pensioners) under clause 8(1)(b)(iii), i.e., does it increase the level of consent to 90%?
- A. No. Section 10.1 does not alter the level of consent required from former members, including pensioners, or “other” persons under clause 8(1)(b)(iii). The level of consent required from former members (including pensioners) and other persons entitled to payments under the pension plan on the date of wind-up is “such number as the Commission considers appropriate in the circumstances”. Under clause 8(1)(b)(iii), the Commission determines the number who must consent on a case-by-case basis. This is solely within the Commission’s discretion.





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SECTION	Surplus
INDEX NO.	S900-506
TITLE	Subsections 79(2) and (4) of the PBA Came Into Effect January 1, 1998
APPROVED BY	Superintendent of Pensions & CEO, Financial Services Commission of Ontario
EFFECTIVE DATE	April, 1998

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Q. Has subsection 8(3) of Regulation 909 ("Reg. 909") under the *Pension Benefits Act* ("PBA") been extended?

A. Yes. Subsection 8(3) of Reg. 909 under the PBA was extended to December 31, 1998. The amendment extending the operation of section 8 of Reg. 909 under the PBA was filed on November 19, 1997 as O. Reg. 415/97.

Q. Have subsections 47(9) and (10) of Reg. 909 under the PBA been extended? If not, what is the effect?

A. No. Subsections 47(9) and (10) of Reg. 909 under the PBA were not extended by O. Reg. 415/97. The expiration of these subsections on December 31, 1997 has removed the temporary suspension of the application of subsections 79(2) and (4) of the PBA. As a result, effective January 1, 1998, this may have significant implications for surplus withdrawal applications for both ongoing plans and plans that are winding up.

These subsections state:

79(2) A pension plan that does not provide for the withdrawal of surplus money while the pension plan continues in existence shall be construed to prohibit the withdrawal of surplus money accrued after the 31st day of December, 1986.

79(4) A pension plan that does not provide for payment of surplus money on the wind up of the pension plan shall be construed to require that surplus money accrued after the 31st day of December, 1986 shall be distributed proportionately on the wind up of the pension plan among members, former members, and any other persons entitled to payments under the pension plan on the date of the wind up.



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SECTION	Surplus
INDEX NO.	S900-507
TITLE	Surplus Applications Affecting Members, Former Members or Other Persons with Employment in a Jurisdiction Other Than Ontario
APPROVED BY	Superintendent of Pensions & CEO, Financial Services Commission of Ontario
EFFECTIVE DATE	April, 1998

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A detailed administrative practice, which deals with applications to the Commission for surplus distribution to an employer pursuant to sections 78 and 79 of the *Pension Benefits Act* and section 8 of the Regulation, was made available to administrators in the Fall-Winter 1997 edition of the *PCO Bulletin* (Policy S900-504).

In addition to the material that must be attached to the Application as set out in paragraph 27 of Part I of Policy S900-504, the Application must also include:

1. disclosure as to whether or not the Application affects members, former members or other persons with employment in a jurisdiction other than Ontario;
2. where the Application affects members, former members or other persons with employment in a jurisdiction other than Ontario, a table indicating the number of members, former members or other persons in each jurisdiction, including Ontario, affected by the application; and

3. where the Application affects members, former members or other persons with employment in a jurisdiction other than Ontario, certification that the Applicant has complied with the requirements for surplus distribution of those jurisdictions with respect to the affected members, former members or other persons.

The information requirements contained in this notice apply to Applications involving both full and partial wind ups. In addition, the information requirements contained in this notice apply to Applications to the Commission for surplus distribution to an employer out of a continuing pension plan.

The Commission will not consider an Application complete unless the information required by this notice is included with the Application. Applicants are reminded that complete Applications must be submitted at least ninety days prior to the date of the Commission meeting at which the Applicant wishes to have the Application considered.



SECTION	Surplus
INDEX NO.	S900-508
TITLE	Application by an Employer for Payment of Surplus from a Wound-up Plan - PBA ss. 78 and 79, as amended - Regulation 909 s. 8
APPROVED BY	Superintendent of Financial Services
EFFECTIVE DATE	July 1, 1998
REPLACES	S900-504

Subsection 78(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 (“PBA”), as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (“FSCO Act”), provides that surplus may not be paid to an employer unless the Superintendent of Financial Services (“Superintendent”) consents to the payment. The Superintendent shall not consent to an application to distribute surplus to an employer (“surplus application”) until specific requirements and conditions have been satisfied. Statements and documents supporting the applicant’s assertion that the requirements and conditions have been satisfied should be included in the surplus application to the Superintendent.

This policy replaces S900-504 (“Surplus Distribution to an Employer, PBA ss. 78 and 79 and O. Reg. 909 s. 8”) in respect of surplus applications filed with the Superintendent on or after July 1, 1998.

Subsection 213(2) of the FSCO Act provides that the Pension Commission, as it existed prior to July 1, 1998, “shall continue to exist for the sole purpose of concluding and disposing of hearings and proceedings that, before the day this section comes into force, were commenced before the Commission but not concluded.” Applicants should refer to policy P520-784 (“Continuation of Proceedings for Certain Applications Under the Current PBA once the *Financial Services Commission of Ontario Act, 1997* comes into Force”).

**Note:** *While this policy is meant to be a guideline, the Superintendent is not bound by it. Furthermore, the Superintendent is not bound by information or advice given by FSCO staff. This policy does not alter any of the requirements of the FSCO Act, PBA or Regulation 909, R.R.O. 1990 (“Regulation”). Where this policy conflicts with the FSCO Act, PBA or Regulation, the FSCO Act, PBA or Regulation govern.*



**Part I** of this policy provides the procedure for bringing a surplus application to the Superintendent on a full wind up pursuant to section 78 of the PBA and section 8 of the Regulation.

**Part II** of this policy provides the modifications to Part I which apply to a surplus application made to the Superintendent on a partial wind up pursuant to section 78 of the PBA and section 8 of the Regulation.

## General

The onus is on the applicant to satisfy the Superintendent that the surplus application meets the requirements of the PBA and the Regulation.

The applicant should also demonstrate compliance with all relevant policies, procedures and administrative practices.

Policy S850-200 ("Filing Applications with the Superintendent of Financial Services") outlines the general procedure for filing those applications, including surplus applications, previously decided by the Pension Commission in the first instance before the full proclamation of the FSCO Act.

It is the applicant's responsibility to decide whether plan specific circumstances warrant the inclusion of additional information or documentation to support the surplus application. For example, additional information about members or former members or additional plan documentation may be relevant in the following circumstances:

- the source of all or a portion of the assets of the pension fund can be traced to the pension fund of another pension plan;
- all or a portion of the liabilities of a pension plan were converted to liabilities determined on another basis (a plan conversion);
- there was a partial wind up at any time prior to the date of wind up; or
- all or a portion of the liabilities of a pension plan relate to members, former members or other persons with employment in a jurisdiction other than Ontario.

If information necessary for the Superintendent to approve a surplus application is missing, the Superintendent will not be able to consent.





The content of this policy is set out as follows:

## **PART I**

### **Distribution of Surplus to an Employer on Full wind up**

General Principles  
Notice of the Surplus Application  
Written Agreement  
The Surplus Application  
Filing the Surplus Application

## **PART II**

### **Distribution of Surplus to an Employer on Partial wind up**

Modifications to Part I for Partial Wind ups

## **SCHEDULE I**

Surplus Application Format and Explanatory Notes

## **PART I**

### **Distribution of Surplus to an Employer on Full wind up**

#### **General Principles**

1. Where an employer wants to be paid surplus on plan wind up, section 78 of the PBA provides that the employer must apply and that no payment may be made without the Superintendent's prior consent. Before the Superintendent can propose to consent to a surplus application, the applicant must satisfy the requirements of subsection 78(2) of the PBA concerning notice and disclosure of all plan provisions relevant to surplus entitlement on wind up. In addition, the requirements of subsections 79(3) and (4) of the PBA must be satisfied, as well as all the requirements of the Regulation.
2. Generally, an employer winding up a pension plan should not file a surplus application until after the payment of basic benefits out of the plan has been approved.
3. Compliance with the requirements of the FSCO Act, PBA, Regulation and conditions identified in any policy, procedure and administrative practice of the former PCO or of FSCO, which affects the surplus application, is the responsibility of the applicant.
4. Applicants are responsible for ensuring that the information contained in the surplus application and any supporting documents is complete and accurate.



## Notice of the Surplus Application

### *Content*

5. The Notice of the surplus application required by subsection 78(2) of the PBA must include the information prescribed under subsection 28(5) of the Regulation.
6. With respect to clause 28(5)(c) of the Regulation (i.e., surplus attributable to employee and employer contributions), the methodology used to determine the surplus attributable to employee and employer contributions should be consistent with policy S900-801 ("Surplus Attributable to Employer and Employee Contributions on Plan Wind up").
7. With respect to clause 28(5)(e) of the Regulation (i.e., the statement that written submissions may be made to the Superintendent within 30 days of receipt of the notice), the notice must state that written submissions are to be directed to the Superintendent.
8. With respect to clause 28(5)(f) of the Regulation (i.e., authority for surplus reversion), there must be full and complete disclosure of all provisions of the plan and trust documentation from inception that may be relevant in determining entitlement to the payment of surplus on wind up, including provisions in all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant.

The actual wording of all the provisions from the plan and trust documentation from inception that may be relevant to surplus entitlement and to the question of authority to make plan amendments must be cited in the Notice of the surplus application, along with a full analysis of their implications. The Notice of the surplus application must also include a complete

historical analysis of all the plan and trust and other documentation that may be relevant to determine whether the plan constitutes a trust. If the plan at any time constituted a trust, the historical analysis must demonstrate that any amendment to the trust that has bearing on surplus entitlement was valid.

Where the plan and trust documentation do not contain explicit provisions addressing surplus entitlement, this fact must also be disclosed in the Notice of the surplus application. It is important to note that if, as of January 1, 1998, the pension plan did not provide for the distribution of surplus on wind up, the applicant must refer to s. 79(4) of the PBA and its consequences for the surplus application.

If a surplus application requires a court order pursuant to subsection 8(2) of the Regulation, the applicant should refer to the procedure under policy S900-600 ("Making Application Under ss. 7a(2)(c)").

9. With respect to clause 28(5)(g) of the Regulation (i.e., notice concerning access to copies of the wind-up report), if the office or location where the members were employed is closed, the employer must make and communicate alternative arrangements close to the location(s) where business was conducted for plan beneficiaries to review the wind-up report filed with the Superintendent in support of the surplus request.
10. The Superintendent may require that the Notice of the surplus application be re-transmitted if the Superintendent determines that the requirements of the PBA and the Regulation have not been satisfied, if conditions identified in any policy, procedure and administrative practice of the former PCO or FSCO affecting surplus applications have not been met, or if there has not been complete, full and fair disclosure of all



information that may be relevant, including the proposed surplus distribution agreement. The employer has a very high obligation of good faith to ensure that full and fair disclosure is given.

11. Subsection 28(5.1) of the Regulation requires that the employer file a copy of the Notice of the surplus application with the Superintendent before it is transmitted.

The Notice of the surplus application should be filed with the Superintendent by sending one (1) copy to:

Superintendent of Financial Services  
Financial Services Commission of Ontario  
5160 Yonge Street, Box 85  
Toronto M2N 6L9

12. With respect to paragraph 7 and subparagraph 27(j), a copy of any written representations filed with the Superintendent will be forwarded to the employer.

#### *Transmitting the Notice of the Surplus Application*

13. After the employer files its Notice of the surplus application with the Superintendent, the employer is required to transmit the Notice of the surplus application to all persons listed in subsection 78(2) of the PBA. The employer must satisfy the Superintendent that full and fair notice has been given to those persons.
14. Transmittal must be by personal delivery or first class mail in accordance with subsection 112(1) of the PBA (see paragraphs 16 and 17).
15. Where the plan wind up results from an event affecting the employment of the members, such as a plant closure, all members participating in the plan on or after the date notice of the event is given must be included as members for purposes of the wind up, including the surplus distribution.

This requirement applies even if a member terminates or is terminated after the notice date but prior to the event actually occurring. Applicants should also refer to policy W100-101("Filing Requirements and Procedure").

#### *Public Advertisement*

16. The Superintendent may authorize delivery of the Notice of the surplus application by public advertisement or otherwise in accordance with subsection 112(3) of the PBA if the Superintendent is satisfied that it is not reasonable to give individual notice to all persons in accordance with paragraph 14.
17. Where an applicant requests the Superintendent's authorization to deliver the Notice of the surplus application by public advertisement, the information provided in the draft public advertisement submitted with the request to the Superintendent must clearly indicate the following:
  - (a) to whom the notice is addressed (e.g. former members and other persons entitled to payments from the wound-up plan or any applicable predecessor plan(s));
  - (b) the reason that these persons are being contacted (i.e., wind up of the pension plan in a surplus position and the surplus application);
  - (c) where the details of the surplus application will be made available; and
  - (d) information that persons to whom notice has been transmitted may make written representations to the Superintendent with respect to the surplus application within thirty (30) days after receiving the notice.

Again, the onus is on the applicant to ensure that full and fair notice and disclosure is given.



## Written Agreement

(Surplus applications pursuant to clause 8(1)(b) of the Regulation)

### *Content*

18. When considering the surplus application, the Superintendent must be satisfied that the employer has:
  - (a) provided the affected members, former members and other persons with full and fair disclosure in the copy of the Notice of the surplus application and a copy of the proposed surplus distribution agreement, before obtaining the written consent of these persons;
  - (b) provided the affected members, former members and other persons with an opportunity to obtain independent legal advice with respect to the Notice of the surplus application and the proposed surplus distribution agreement;
  - (c) given these persons sufficient time to consider the surplus application, before the employer obtains the written consent of these persons; and
  - (d) obtained the number of written agreements required under the Regulation.
19. The surplus distribution agreement must be in writing and must provide for:
  - (a) the name of the individual;
  - (b) the signature of the individual;
  - (c) the name of a witness;
  - (d) the signature of the witness; and
  - (e) the date on which it is signed.

## *Transmitting the Written Agreement*

20. In order to obtain the written agreements required under clause 8(1)(b) of the Regulation, a copy of the proposed surplus distribution agreement must be given to all persons listed in subsection 78(2) of the PBA. In accordance with subsection 112(1) of the PBA, transmittal must be by personal delivery or first class mail.

A copy of the proposed surplus distribution agreement should be transmitted along with the notice of the surplus application.

## *Written Agreements*

21. Normally, to satisfy subclause 8(1)(b)(iii) of the Regulation, an applicant should obtain the written agreement of at least two-thirds of the aggregate of those former members and other persons who are entitled to payments under the pension plan on the date of wind up. This requirement is subject to the Superintendent's discretion following a review of the circumstances of each surplus application.
22. The appropriate collective bargaining agent for the purposes of subclause 8(1)(b)(ii) of the Regulation is the collective bargaining agent who represents certain plan members at the date the collective bargaining agent signs the agreement on behalf of those members.
23. A collective bargaining agent may enter into a written agreement only on behalf of those plan members represented by the agent. Therefore, if a pension plan involves more than one bargaining agent, the written agreement of each bargaining agent is required.





24. If a pension plan is provided for both unionized and non-unionized members, in addition to the written agreement of the collective bargaining agent(s), the written agreement of at least two-thirds of those members not represented by the bargaining agent(s) must be obtained.
25. The written agreement of a collective bargaining agent who represents the members of the pension plan must be obtained, even where the collective bargaining agent does not bargain the pension plan.

### The Surplus Application

26. The format and content of the surplus application should be consistent with Schedule I to this policy.
27. All material required by the PBA and Regulation must be attached to the surplus application, including:
  - (a) A list, by class, of the names of members, former members or other persons who are affected by the wind up.
  - (b) A certified copy of the notice referred to in subsection 28(5), pursuant to subsection 28(6) of the Regulation.
  - (c) A statement that the employer has complied with subsection 78(2) of the PBA.
  - (d) A list, by class, of the names of members, former members or any other persons who received the Notice of the surplus application, the date the last Notice was transmitted and the form of delivery of the Notice.
  - (e) Copies of all plan and trust documentation from inception, including all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee

notices, collective bargaining agreements, information brochures and any other documents that may be relevant to surplus entitlement. The applicant should highlight the parts of the plan and trust documentation that the applicant believes may be relevant to surplus entitlement. Full documents should be arranged in chronological order and clearly labelled.

- (f) Copies of the title page and the balance sheet (or any updated balance sheet) of the wind-up report as of the effective date of the wind up giving rise to the surplus application and the actuary's certification from the wind-up report or any supplemental wind-up report.

A supplement to a wind-up report will be required if it is discovered that the initial report does not reflect the surplus distribution proposals outlined in the surplus application.

- (g) Information required to be submitted to staff in accordance with policy S900-801 ("Surplus Attributable to Employer and Employee Contributions on Plan Wind up").
- (h) The approval by the Superintendent of the payment of basic benefits based on the wind-up report and any supplementary report.
- (i) A copy of the most recent collective agreement(s) if some or all of the affected members are represented by a collective bargaining agent(s).
- (j) Any written representations objecting to the surplus application received by the applicant directly or through the Superintendent, as well as any response(s) by the applicant.



- (k) Disclosure as to whether or not the surplus application affects members, former members or other persons with employment in a jurisdiction other than Ontario. Applicants should refer to policy S900-507 ("Surplus Applications Affecting Members, Former Members or Other Persons with Employment in a Jurisdiction Other Than Ontario").

Where the surplus application affects members, former members or other persons with employment in a jurisdiction other than Ontario,

- i) a table indicating the number of members, former members or other persons affected by the surplus application in each jurisdiction, including Ontario; and
  - ii) certification that the applicant has complied with the requirements for surplus distribution of those jurisdictions with respect to the affected members, former members or other persons.
- (l) Any submissions which may be relevant to the surplus application.

Where other materials or information which may be relevant are discovered after the surplus application has been filed, such materials or information must be filed as an addendum to the initial surplus application (see paragraph 29).

- (m) Where the surplus application is made pursuant to clause 8(1)(b) of the Regulation,
- i) a copy of the proposed surplus distribution agreement;

- ii) a list, by class, of the names of members, former members or other persons who received a copy of the proposed surplus distribution agreement, the last date the agreement was transmitted and the form of delivery of the agreement;

- iii) a sample copy of the written agreement obtained from a plan member, former member, or other person with respect to the proposed surplus distribution agreement; and

- iv) copies of the written agreement(s) between the employer and any collective bargaining agent(s) that pertain to the surplus distribution agreement.

- v) list of the members, former members or other persons who did not agree to the proposed distribution agreement or did not respond.

- (n) Where the surplus application is made pursuant to subsection 8(2) of the Regulation, the applicant should refer to policy S900-600 ("Making Application Under ss. 7a(2)(c)"). If the applicant has already obtained a court order concerning entitlement to surplus and distribution of funds from surplus, a copy of the court order must be attached to the surplus application.



## Filing the Surplus Application

28. a) The general procedure is outlined in policy S850-200 ("Filing Applications with the Superintendent of Financial Services").  
b) The surplus application, including attachments, should be submitted on 8-1/2" x 11" paper (subject to legibility).
29. The surplus application is filed with the Superintendent by sending seven (7) copies to:  
  
Superintendent of Financial Services  
Financial Services Commission of Ontario  
5160 Yonge Street, Box 85  
Toronto M2N 6L9  
  
Seven (7) copies of any information or materials which are supplemental to the initial filing and which are required in order to complete the surplus application should be filed with the Superintendent.
30. Upon receipt, the surplus application will be acknowledged.
31. The Superintendent will not consider the surplus application unless the Superintendent has approved the payment of basic benefits on the basis of the wind-up report.
32. The applicant must forward a copy of the surplus application to the plan administrator.
33. For surplus applications made pursuant to clause 8(1)(b) of the Regulation, a copy of a sample signed written agreement should be included in each of the seven (7) copies submitted to the Superintendent. As well, two full sets of all of the signed written agreements obtained from plan members, former members, and other persons with respect to the disclosed surplus distribution agreement must be filed with the Superintendent. One set should include all the original signed written agreements.

## Review Process

34. a) If staff believe that an application is incomplete, they will advise the applicant in writing. The applicant must submit seven (7) copies of the documentation required to complete the application.  
b) The review of a surplus application will not proceed until the earlier of the date when:
  - i) staff receive all of the information requested;
  - ii) the applicant submits a written request asking that the surplus application proceed as is (i.e., without submitting the additional information that staff have requested); or
  - iii) the time period for a response, as set out in the letter from staff, expires.
35. Staff will then review the surplus application and all other filed materials for compliance with the FSCO Act, PBA, Regulation and relevant policies, procedures and administrative practices. If any compliance concerns are identified, staff will send a letter outlining their concerns to the applicant, the collective bargaining agent(s) of the members (if applicable), and any person who has made written representations under section 78(3) of the PBA.
36. Staff's letter will specify the time period in which the applicant, the collective bargaining agent(s) of the members (if applicable) or any person who has made written representations under section 78(3) of the PBA must provide a written response to the compliance concerns, if they wish to have the response considered in the decision-making.

Seven (7) copies of the written response must be submitted to the Superintendent.



37. The Superintendent's proposed decision will be served on the applicant and on any person who has made written representations under s. 78(3) of the PBA, by way of a notice of proposal with written reasons.
38. A person on whom the notice of proposal is served is entitled to a hearing before the Financial Services Tribunal ("Tribunal") under s. 89(6) of the PBA if the person delivers to the Tribunal written notice requiring a hearing within thirty (30) days after being served with the notice of proposal.
39. If no notice requiring a hearing is received within the specified time frame, the Superintendent may carry out the proposed decision.
40. Applicants should refer to policy S850-100 ("Delegation of the Superintendent's Authorities") for additional information on the decision-making process.

## PART II

### Distribution of Surplus to an Employer on Partial wind up

Part I procedures will apply with respect to partial wind ups subject to the following:

1. For the purpose of a surplus application under Part II of this policy, any reference to "full wind up" or "wind up" under Part I of this paper should be read as "partial wind up".
2. Those persons listed in subsection 78(2) of the PBA must receive the Notice of the surplus application by personal delivery or first class mail in accordance with subsection 112(1) of the PBA.
3. The following persons must also receive a copy of the proposed surplus distribution agreement:
  - (a) all persons who are affected by the partial wind up (i.e., those persons who are entitled to receive payment from the pension plan as a result of the event which gave rise to the partial wind up),
  - (b) all persons who ceased to be employed as a result of the event which gave rise to the partial wind up, and
  - (c) each collective bargaining agent that represents any members under the plan at the date of partial wind up.

The applicant must satisfy the Superintendent that full and fair notice has been given.

4. For the purposes of obtaining written agreement in accordance with subclause 8(1)(b)(ii) of the Regulation, the appropriate collective bargaining agent is the collective bargaining agent who represents certain plan members at the date the collective bargaining agent signs the agreement on behalf of those members.





No written agreement is required from a collective bargaining agent who, at the date of partial wind up, does not represent members affected by the partial wind up.

5. Where written agreement is required pursuant to subclause 8(1)(b)(ii) of the Regulation, and there is no collective bargaining agent who represents the members who are affected by the partial wind up, written agreement must be obtained from at least two-thirds of the members who are affected by the partial wind up.
6. For the purposes of subclause 8(1)(b)(iii) of the Regulation, the written agreement of at least two-thirds of the aggregate of the former members and other persons who are directly affected by the partial wind up should be obtained. This requirement is subject to the Superintendent's discretion following a review of the circumstances which are applicable to each individual surplus application.
7. The applicant must satisfy the Superintendent that the requirements of the PBA and Regulation have been met.

## SCHEDULE I

### Format and Content of the Application to the Superintendent for Consent to the Refund of Surplus to an Employer

#### Date

*Enter the date of the surplus application.*

#### Employer

*Provide the correct legal name of the employer making the surplus application.*

#### Pension Plan

*Provide the full registered name of the pension plan and the registration number.*

#### Applicant

*Provide the name, title and business address of the corporate officer authorized to act on the employer's behalf. (Unless otherwise indicated in the surplus application, all communication from the Superintendent and staff of FSCO will be directed to the agent or counsel who files the surplus application on the applicant's behalf.)*

#### Nature of the Surplus Application

*Provide a full description of the surplus application to the Superintendent with reference to the specific section(s) of the PBA and Regulation pursuant to which the surplus application is being made.*

*For example:*

Application for the Superintendent's consent pursuant to subsection 78(1) of the Pension Benefits Act, R.S.O. 1990, c. P. 8, as amended, and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended, to a payment of surplus to (provide full legal name of the employer) in the



amount of \$ (show the amount sought at the effective date of wind up) as at (show the effective date of wind up) plus investment earnings thereon to the date of payment (add reference if employer is seeking any other adjustment in its request for the surplus refund).

This application includes a surplus distribution agreement whereby (x) per cent of the surplus as of the effective date of wind up will be distributed to the members, former members and other persons entitled to benefits as of the effective date of wind up in the form of indexed benefits.

*Appropriate modifications will be required for surplus applications based on a court order pursuant to subsection 8(2) of the Regulation.*

#### Actuary/Counsel

*Provide the name of any person acting as the agent or counsel for the employer making the surplus application, or acting on behalf of the members, former members or other persons. If there are no such persons, please indicate "None".*

Actuary for the Applicant (and name of firm)

Counsel for the Applicant (and name of firm)

Counsel for the Members/former members/  
union/etc.

Actuary for the Members/former members/  
union/etc.

#### Plan Administrator

*Provide the name and address of the person designated to act as plan administrator, if different from the corporate officer acting for the applicant employer.*

#### Collective Bargaining Agent

*Provide the name of the Collective Bargaining Agent(s) who represent any members or former members of the pension plan.*

#### Background

*Provide a brief summary of the background of the plan leading up to the surplus application including:*

- *the effective date of the plan;*
- *the classes of members covered by the plan;*
- *the basic benefit structure (e.g. "non-contributory", "flat benefit plan");*
- *a brief chronology of the plan and prior versions thereof, including any pension plan from which assets of the wound-up pension plan can be traced (include references to asset transfers to or from the pension fund of another pension plan, plan conversions, and partial wind ups that may have occurred prior to the date of wind up);*
- *the corporate history relevant to the plan and any predecessor plans, including the background to any changes in the name of the employer associated with the pension plan;*
- *the effective date and reasons for the wind up of the pension plan; and*
- *any other information which will assist in understanding the surplus application.*



## Subsection 78(2) of the PBA - Notice Requirements

*The applicant must satisfy the Superintendent that the persons listed in subsection 78(2) have received full and fair notice and that the requirements of the PBA and Regulation have been satisfied.*

### (a) Subsections 28(5) and 28(5.1) of the Regulation

*Provide information indicating how the applicant has complied with*

- *subsection 28(5) and any related policies, procedures or administrative practices setting out the minimum content to be included in the Notice of the surplus application required under subsection 78(2) of the PBA. This minimum content does not alter the applicant's obligation to ensure that full and fair notice is given.*
- *subsection 28(5.1) which requires that a copy of the Notice of the surplus application be filed with the Superintendent prior to transmittal to the members, former members and other persons.*

### (b) Subsection 28(6) of the Regulation

*Provide information demonstrating compliance with subsection 28(6) of the Regulation which requires that the surplus application be accompanied by a certified copy of the Notice of the surplus application signed by the corporate officer authorized to act for the applicant, a statement signed by that corporate officer that subsection 78(2) of the PBA has been complied with, the date the last Notice of the surplus application was distributed and details as to the classes of persons who received notice. Include reference to the attachment or tab at which the certified copy of the notice may be found.*

## Subsection 112(3) of the PBA - Alternate Service

*If, in lieu of individual notice, the Notice of the surplus application is transmitted by public advertisement, indicate the classes or groups who were served by the public advertisement, the dates and newspapers in which the advertisement ran and provide a copy of the advertisement.*

*If, in lieu of individual notice, the Notice of the surplus application is transmitted by an alternative form of notice other than public advertisement, indicate the classes or groups who were served by the alternative form of notice, the dates and method by which the alternative form of notice was served and provide a copy of the alternative form of notice.*

*Refer to the attachment or tab in the surplus application where a copy of the public advertisement or alternative form of notice and the Superintendent's authorization for alternative service are found.*

## Subsection 79(3) of the PBA - Conditions Precedent to a Proposal to Consent

*In the following sections, the applicant must satisfy the Superintendent that all the conditions in the PBA and Regulation have been met.*

### (a) Clause 79(3)(a) - The Plan has a Surplus:

*The applicant must demonstrate that the plan has a surplus.*

*Provide the date of the letter from the Superintendent approving the distribution of the members' and former members' basic benefits. Refer to the attachment or tab at which extracts of the wind-up report and supplemental report and a copy of the Superintendent's letter may be found. Include in the surplus application a brief summary of the balance sheet for the plan as at the effective date of wind up along with an updated balance sheet if there has been any significant change in the figures.*



*For example:*

Balance Sheet	As at effective date of wind up	As of (current date)
Market value of assets	\$ .00	\$ .00
Liabilities		
Basic benefit entitlements	\$ .00	\$ .00
Liabilities for enhancements	\$ .00	\$ .00
Expenses	\$ .00	\$ .00
Surplus		
Surplus distribution agreement	\$ .00	\$ .00
To employees	\$ .00 (%)	
To employers	\$ .00 (%)	

**(b) Clause 79(3)(b) of the PBA - The Plan Provides for the Payment of Surplus to the Employer on the Wind up of the Pension Plan:**

*The applicant employer must satisfy the Superintendent that the plan provides for the payment of surplus to the employer on wind up. Therefore, the surplus application must establish that the employer is legally entitled to the payment of surplus on wind up. The employer must provide a complete chronological history of the plan, and any predecessor or prior plans that may be relevant, and copies of all plan and trust documentation since inception, including all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant to the Superintendent's determination of whether a plan provides for the payment of surplus to the employer. The employer must also provide a full analysis showing how it reaches the conclusion that it, and not the plan beneficiaries, is entitled to the surplus.*

*Where there are prior pension plans from which the current plan assets can be traced, or that that may otherwise be relevant, the history must take into account the prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant to the Superintendent's determination of whether a plan provides for the payment of surplus to the employer.*

*Where any plan or trust documentation that may be relevant has been amended since its inception, the history must spell out the authority under the plan or trust to amend the provision or document. The history must also refer to all provisions or documents that do not support the surplus application.*





*The applicant should highlight the portions of the documents that may be relevant to the Superintendent's decision on surplus entitlement, including those provisions that do not support the applicant's claim to surplus. Complete documents must be included as attachment(s) to the surplus application and must be clearly labelled.*

*All documents must be complete, arranged in chronological order and clearly labelled. All portions of the documents that may be relevant, whether or not they support the applicant's claim to surplus, must be highlighted.*

*As of January 1, 1998, if the pension plan did not provide for the distribution of surplus on wind up, the applicant must refer to subsection 79(4) of the PBA and its consequences for the surplus application.*

**(c) Clause 79(3)(c) of the PBA - Provision has been made for the Payment of All Liabilities of the Pension Plan:**

*Outline the status of the distributions of basic benefits and surplus to members, former members and any other persons entitled to payments. If the Superintendent is not satisfied that adequate provision has been made for the payment of all liabilities of the pension plan, the Superintendent may propose to refuse the surplus application.*

**Clause 8(1)(b) of the Regulation - Written Agreement**

Provide a summary of the notices issued and signed surplus distribution agreements provided.

For example:

	Total Number	Notices Issued	Written Consents	(%)
Employer	_____	_____	_____	_____
Collective Bargaining Agent(s)	_____	_____	_____	_____
Members	_____	_____	_____	_____
Former Members/ Other Persons	_____	_____	_____	_____

**Subsection 8(2) of the Regulation - The Court Order**

**(a) Clause 8(2)(b) of the Regulation - Eligibility as a "Grandfathered Plan":**

*Provide information supporting the applicant's position that the surplus application is eligible to proceed under subsection 8(2), the "grandfathering provision."*

The applicant may make application pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991 as (*enter the reason why the plan is a "grandfathered plan," i.e., "the notice of proposal to wind up was filed prior to December 18, 1991" - enter the date the notice of proposal to wind up the plan was given to the Superintendent*).



(b) **Clause 8(2)(a) of the Regulation -**

**The Status of the Application to Court:**

*Provide information concerning the status of the application to the court. Refer to the attachment which indicates the applicant's intention or where the copy of the order is located.*

The applicant has applied to the court for an order pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991 (*enter "and has obtained" or "and is to obtain"*) an order for payment of the surplus assets to the applicant on termination of the Plan.

**Representations**

*The employer must specify whether or not it received any objections or representations and attach to the surplus application copies of those objections or representations and any response(s) by the employer.*

**Attachments**

*Provide an index of all attachments to the surplus application. The attachments should be listed in the order that corresponds to the order of the subject matter under this document and, where applicable, in chronological order. Where a surplus application is bound, the relevant tab numbers and their contents should also be included in the index.*

**Other Jurisdictions**

*The applicant must disclose whether or not the plan has members, former members or other persons with benefits resulting from employment in a jurisdiction other than Ontario. Where the surplus application affects members, former members or other persons with benefits resulting from employment in a jurisdiction other than Ontario, the employer must include a table indicating the number of members, former members or other persons in each jurisdiction, including Ontario, affected by the surplus application. The applicant must also provide certification that the applicant has complied with the requirements for surplus distribution of those jurisdictions with respect to the affected members, former members or other persons. Applicants should refer to policy S900-507 ("Surplus Applications Affecting Members, Former Members or Other Persons with Employment in a Jurisdiction Other than Ontario").*

[ **Note:** *The process for reviewing surplus applications that affect members, former members or other persons with benefits resulting from employment in a jurisdiction other than Ontario is under review.*  ]



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SECTION	Transfer Values
INDEX NO.	T800-901
TITLE	Subsidized Early Retirement and Bridge Benefits where Eligibility Requirements have been Met and Plan Provides for Transfer Options - PBA, R.S.O. 1990, Chapter P.8
APPROVED BY	The Pension Commission of Ontario
EFFECTIVE DATE	March, 1998

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Q. An employer currently provides a subsidized early retirement pension and bridge benefits for members who retire from active service. Members terminating prior to eligibility for early retirement are not eligible for any early retirement subsidies or bridge benefits (i.e. on early retirement, they receive the actuarial equivalent of the benefit at normal retirement age). Pursuant to subsection 42(3) of the Act, the plan sponsor now wishes to add a commuted value option for active members who terminate employment after eligibility for early retirement. Does the commuted value option need to reflect the full value of the early retirement subsidies and bridge benefits?

A. Yes, as long as the member has met all of the conditions of eligibility for the early retirement and bridge benefits in question. Note that employer consent is also deemed to be given pursuant to subsection 40(3) if all other conditions have been met.

Subsection 40(2) of the Pension Benefits Act, R.S.O. 1990, Chapter P.8 states that:

An ancillary benefit for which a member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit shall be included in calculating the member's pension benefit or the commuted value of the pension benefit. (emphasis added)

This subsection provides that the value of all ancillary benefits *for which the member has met all eligibility requirements* (in this case the subsidized early retirement pension and bridge benefits) must be included in the calculation of the commuted value. Therefore, it is not acceptable to calculate and offer the commuted value for an eligible member without the early retirement subsidies or the bridging benefits. To comply with subsection 40(2) of the Act, the plan member's commuted value option must include these ancillary benefits. Alternatively, the commuted value option need not be added for those who are eligible for early retirement and bridge benefits.



## Enforcement Matters

*[In this section, “Superintendent of Pensions” refers to the former Superintendent of Pensions under the Pension Benefits Act]*

### Court Cases Concluded Under the PBA and Regulations

#### *Maysfield Property Management (1987) Inc.*

On August 15, 1996, charges were laid against Maysfield Property Management (1987) Inc. (“Maysfield”) as employer and administrator of its pension plan, and against a director and officer of Maysfield. The charges relate to failure to comply with the Superintendent of Pension’s demand for information under s. 98 of the PBA, and to failure to file valuation reports, annual information returns and financial statements. The first appearance was October 1, 1996. The trial began on April 3, 1997, and was completed on June 25, 1997. Three counts against the director and officer related to the Superintendent of Pension’s demand for information under s. 98 of the PBA were dismissed. The Court reserved judgment on the remaining 16 counts.

On January 15, 1998, the Court rendered its decision. Maysfield was convicted on five counts of failing to file annual information returns with the PCO for five separate fiscal years. As Maysfield is a dissolved corporation, no penalty was sought against it. The director and officer Carl Rahey was also convicted on five counts of failing to file annual information returns with the PCO for five separate years. . The Crown requested a fine of \$1,000.00 per count against Mr. Rahey, for a total of \$5,000.00. The Court imposed a fine of \$100.00 against Mr. Rahey on the first count and suspended sentence on the remaining four counts, noting that he is now 69 years old, that

he lost over a million dollars in the Maysfield business enterprise, and that none of the members of the Maysfield pension plan suffered any loss. Mr. Rahey was given 60 days to pay the fine.

#### *Ingadale Precision Products Ltd. and Ingadale Industries Inc.*

In November 1997, charges were laid against Ingadale Precision Products Ltd. and Ingadale Industries Inc. (“Ingadale”) as employer and administrator of the Retirement Plan for Employees of Ingadale Precision Products Ltd., and against two directors and officers of Ingadale. The charges relate to:

1. failure to file annual information returns in accordance with ss. 20(1) of the PBA;
2. failure to file a valuation report in accordance with ss. 14(1) and 14(7) of the Regulation;
3. failure to remit funds to the pension plan in accordance with ss. 55(2) of the PBA; and
4. failure to comply with a request for information made by the Superintendent of Pensions under s. 98 of the PBA.

On March 24, 1998, Ingadale Precision Products Ltd. pleaded guilty to failing to file an annual information return for the year ending June 30, 1994. The corporation was given a suspended sentence and placed on probation for one year. The terms of the probation were that Ingadale wind up its pension plan effective November 1, 1990. The remaining charges were withdrawn.





The Court considered this a sufficient deterrent for the following reasons:

- the corporation had no prior record;
- the principals of the corporation had been misled by Revenue Canada and London Life into believing that the plan had been suspended and that no filings were required. Revenue Canada wrote to Ingadale on August 21, 1991, giving it permission to suspend contributions for one year. London Life wrote to Ingadale on July 26, 1991, enclosing an amendment suspending the contributions, which was stated to be registered with London Life;
- the principals were relatively unsophisticated individuals who said they were confused by pension laws and who thought that the pension plan had been wound up when contributions were suspended by Revenue Canada and London Life;
- Ingadale began experiencing financial difficulties in the late 1980's, and eventually discontinued business in 1993 when its property was taken over by its mortgagee; and
- the six members of the plan, which included the two principals, sent acknowledgments to the PCO indicating that they were aware that contributions to the plan had ceased and that the plan was to be terminated as of November 1, 1990.



## Superintendent of Pensions - Notices and Orders

*[In this section, “Superintendent of Pensions” refers to the former Superintendent of Pensions under the Pension Benefits Act]*

### Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) The Pension Plan for Designated Employees of Saracini Investments Limited, Registration Number 529339, (effective October 1, 1989), February 10, 1998
- 2) Transcrane Manufacturing Limited Pension Plan, Registration Number 0464842, (effective November 18, 1994), February 12, 1998
- 3) Retirement Plan for Salaried Employees of Cooper Canada - Plan A, Registration Number 240622, (partially wound up in relation to those members and former members of the Plan who were employed by Cooper Industries (Canada) Inc. (“Cooper”) at its Port Hope, Ontario location and who ceased to be employed by Cooper effective from March 26, 1991 to March 30, 1992 or the date the last Plan member employed by Cooper at its Port Hope location ceased employment, whichever is later, as a result of: (i) the discontinuance of part of the business of Cooper; (ii) the reorganization of the business of Cooper; or (iii) the discontinuance of all or a significant portion of the business carried on by Cooper at its Port Hope, Ontario location), July 2, 1998
- 4) Pension Plan for Hourly Employees of Frink Environmental Inc. & Eastern Steel Products Inc., Registration Number 0354506, (effective September 20, 1994), July 9, 1998
- 5) Pension Plan for Hourly Rated Employees of Hamilton Gear, a Division of Compro Limited, Registration Number C-12052, (effective September 20, 1994), July 9, 1998
- 6) Retirement Plan for the Employees of Sprout, Waldron of Canada Limited, Registration Number 597542, (effective August 4, 1986), July 17, 1998
- 7) Pension Plan for Hourly-Rated Employees of Barrymore Carpet Division of Carpita Corporation, Registration Number C-14852, (effective June 29, 1990), September 10, 1998
- 8) AM International Inc. Pension Plan (1979), Registration Number 0202044, (effective October 17, 1996), September 11, 1998
- 9) AM International Inc. Pension Plan for Management Employees, Registration Number 0361980, (effective October 17, 1996), September 11, 1998
- 10) AM International Inc. Pension Plan for Hourly Employees, Registration Number 0361998, (effective October 17, 1996), September 11, 1998



### **Notices of Proposal to Refuse to Approve a Partial Wind-Up Report Subsection 70(5) of the PBA**

The Superintendent, issued Notices of Proposal to Refuse to Approve a Partial Wind-Up Report pursuant to subsection 70(5) of the PBA (date of notice of proposal to make an order indicated):

- 1) Procter & Gamble Inc. Core Pension Plan, Registration Number 0681163, (effective May 15, 1995), November 17, 1997

### **Wind-Up Orders - Section 69 of the PBA**

The Superintendent issued Orders, pursuant to section 69 of the PBA [Wind-up Orders], as follows (effective date of wind up and date of order indicated, respectively):

- 1) Pension Plan for Employees of John T. Hepburn, Limited, Registration Number C-5215, (effective July 6, 1994), October 27, 1997
- 2) Retirement Plan for the Employees of Cody's Stores Limited, Registration Number 0401588, (effective April 30, 1996), December 22, 1997
- 3) The W.G. Young Co. Limited and Affiliated Companies Employees Pension Plan, Registration Number 325290, (effective November 10, 1995), February 12, 1998
- 4) Transcrane Manufacturing Limited Pension Plan, Registration Number 0464842, (effective November 18, 1994), May 26, 1998
- 5) The Pension Plan for Designated Employees of Saracini Investments Limited, 529339, (effective October 1, 1989), June 3, 1998
- 6) Pension Plan for Hourly Rated Employees of Hamilton Gear, a Division of Compro Limited, Registration Number C-12052, (effective September 20, 1994), September 1, 1998
- 7) Pension Plan for Hourly Employees of Frink Environmental Inc. & Eastern Steel Products Inc., Registration Number 0354506, (effective September 20, 1994), September 1, 1998
- 8) Retirement Plan for the Employees of Sprout, Waldron of Canada Limited, Registration Number 0597542, (effective August 4, 1986), September 8, 1998



## Tribunal Activities

### Appointments of Financial Services Tribunal Members

Name and Order-in-Council (O.C.)	Effective Appointment Date	Expiry Date
Gillese, Eileen Elizabeth (Chair) O.C. 1807/98	July 8, 1998	July 7, 1999
Milczynski, Martha (Vice-Chair) O.C. 1808/98	July 8, 1998	July 7, 2001
McNairn, Colin (Vice-Chair) O.C. 1809/98	July 8, 1998	July 7, 2001
Bush, Kathryn M. O.C. 904/97	May 14, 1997	June 16, 1999
Beggs, Darcie L. O. C. 2185/97	December 6, 1997	December 5, 1998
Erlichman, Louis O.C. 1592/98	June 17, 1998	December 16, 1998
Forbes, William M. O.C. 520/98	March 25, 1998	March 24, 2001
Greville, M. Elizabeth O.C. 2405/95	February 8, 1996	February 7, 1999
Martin, Joseph P. O.C. 1810/98	July 8, 1998	July 7, 2001
Moore, C.S. (Kit) O.C. 1591/98	July 1, 1998	June 30, 2001
Robinson, Judy O.C. 905/97	May 14, 1997	May 13, 2000
Stephenson, Joyce Anne O.C. 1930/95	November 4, 1998	November 3, 2001
Wires, David E. O.C. 257/97	February 27, 1997	February 26, 2000





## Hearings Before The Commission

[In this section, "Commission" refers to the Pension Commission of Ontario]

*Pension Plan for Unionized Employees of Asea Brown Boveri Inc. Located at London, Burlington and St. Jean, Registration Number 683433*

In July 1996, the Superintendent of Pensions issued a notice refusing to approve the wind-up report filed by Asea Brown Boveri Inc. ("ABB") on the grounds that the wind-up report did not provide "grow-in" benefits in accordance with s. 74 of the PBA. ABB requested a hearing. Plan members belong to the CAW. The Union advised the Registrar that it wished to be a party to the hearing. In September 1996, ABB submitted revisions to the wind-up report and asked the Superintendent to withdraw his notice of proposal. The Superintendent and the union are considering ABB's revised wind-up report and its request regarding the notice of proposal. In May 1997, the Superintendent requested that the matter be adjourned until the *GenCorp* case is decided. In July 1997, the matter was adjourned *sine die* for a period not exceeding one year. A pre-hearing conference is scheduled for January 22, 1999.

*Non-Contributory Pension Plan for Represented Employees at Parts Distribution Centres, Chrysler Canada Ltd., Registration Number 337808*

In November 1997, a former plan member, Mr. Dwyer, requested a hearing by the Commission for a declaration that he is entitled to a deferred pension or a lump sum payment under the plan. The hearing request was opposed by Chrysler, the CAW-Canada and CAW Local 1285.

A pre-hearing conference was held on January 29, 1998. A hearing on certain preliminary issues was held on May 20, 1998. The Commission dismissed the

application. The decision with reasons was released on August 19, 1998.

*Clergy Retirement Pension Plan of the Diocese of Hamilton*

In September 1996, the Superintendent of Pensions issued a notice proposing to order the Diocese of Hamilton to register its pension plan in accordance with ss.9(2) of the Act. The Diocese of Hamilton requested a hearing. A pre-hearing commenced in May 1997, and was continued in September 1997 and on February 27, 1998. Hearing dates were scheduled for October 13, 14, 15 and 16, 1998. By letter dated August 26, 1998, Revenue Canada advised that the pension plan is, in part a retirement compensation arrangement (RCA) as defined in subsection 248(1) of the *Income Tax Act*. The Superintendent requested that the hearing be adjourned *sine die* to allow the Superintendent to consider the matter.

*CWA/ITU Pension Plan (Canada), Registration Number 554717*

In March 1998, the Communications, Energy and Paperworkers Union of Canada ("CEP") requested a s.89 hearing regarding a proposed partial wind up of the Plan. It asked the Commission: (a) to rescind the resolution of the Trustees to partially wind up the plan; (b) to order the Trustees and Administrator not to take any steps to realize the partial wind up; (c) to require the Plan to accept employer contributions on behalf of active members for work performed after December 31, 1997; and (d) to order the Trustee to fully consider dividing the Plan's assets and liabilities on an equitable basis between a CWA/ITU Plan and a Union Plan based on the number of retirees and the number of active participants. Hearing dates are scheduled on February 22, 23, 24, 25 and 26, 1999.



*McDonnell Douglas Canada Ltd. Salaried Plan,  
Registration Number 520593*

In November 1996, the Superintendent advised certain former members of the McDonnell Douglas Plan that he would not order the partial wind up they had requested. In December 1996, an individual, on behalf of a group of former McDonnell Douglas Employees, requested a hearing regarding the Superintendent's refusal to order a partial wind up of the Plan.

A pre-hearing was held in July 1997, and continued in October and November 1997. A jurisdictional hearing was held on March 27, 1998. The hearing panel decided that the Commission has jurisdiction to hear this matter pursuant to Section 89 of the Act. Reasons for Decision were issued on May 25, 1998. Hearing dates were held November 4, 5 and 6, 1998, and will continue on February 2, 3 and 4, 1999.

*Pension Plan for Hospital Employees of the Sisters  
of St. Joseph for the Diocese of Toronto in Upper  
Canada, Registration Number 302851*

In February 1997, the Canadian Union of Public Employees, Locals No. 1144 and 1590 ("CUPE") requested a s. 89 hearing pursuant to the Superintendent's decisions dated January 13, 1997, with respect to the transfer of assets from the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, 302851, to the St. Joseph's Health Centre Pension Plan, the Providence Centre Pension Plan and the Morrow Park Plan. Four of the orders requested were intended to prohibit the asset transfers. The other four orders requested sought: (a) declarations that the Plan and the new Plans constitute a multi-employer pension plan ("MEPP") established pursuant to a collective agreement or trust agreement, and (b) orders that the Plan be administered by a board of trustees of whom at least half are member representatives.

A pre-hearing conference was held in July 1997. A hearing on jurisdictional issues was held in January 1998. The hearing panel decided that the Commission has the jurisdiction to hold a hearing into whether the Pension Plan is a MEPP. A Disclosure Motion was heard on July 27, 1998 before the full panel. A decision with reasons was released on September 9, 1998. Hearing dates were held October 27 and 28, 1998 and November 17, 1998.

*Ontario Hydro Pension and Insurance Plan,  
Registration Number 352377*

In October of 1997, Ontario Hydro commenced an application in the Ontario Court (General Division) asking for a declaration that a dual valuation method was permissible under both the PBA and the Power Corporation Act. In December of 1997, the Power Workers Union asked the Commission to make an order under section 88 of the PBA requiring the plan administrator to cease using the dual valuation method and to submit a new report.

The Power Workers Union and the Society of Ontario Hydro Professional and Administrative Employees, the two respondents in the court application, brought a motion to have the court application dismissed or stayed on the ground that it was premature and that the Pension Commission was the appropriate adjudicative body to determine the issue. Intervention was granted to the Pension Commission of Ontario to participate in this motion as a friend of the court. The intervention motion was heard on February 2, 1998, and the prematurity motion was heard on February 2 and 3, 1998. On May 6, 1998, the court dismissed Hydro's application.

By letter dated June 22, 1998, the Power Workers Union withdrew their request for the Commission to deal with the matter.



On June 29, 1998, The Society of Ontario Hydro Professional and Administrative Employees requested that the Commission proceed with the matter. A pre-hearing conference was held on October 21, 1998.

In a separate matter, in March 1998, a former member, named Dr. Simon, of the Ontario Hydro Pension and Insurance Plan requested a hearing under s. 89 of the PBA, with respect to the refusal of the Superintendent of Pensions to issue a Notice of Proposal under s. 87 of the Act. A pre-hearing conference was held on September 16, 1998.

*Pension Plan for Employees of Zurich Canadian Holdings Limited, Registration Number 0319517*

In August 1996, a former member requested a hearing on the grounds that the Superintendent refused to order a partial wind up of the pension plan. The former member claims that a partial wind up should be ordered because a significant number of members ceased to be employed as a result of the reorganization of Zurich Canada. In the January 1997 pre-hearing, it was decided that the hearing would be held in two stages. Hearing dates were scheduled for November 1998 and March 1999. By letter dated September 30, 1998, the Applicant withdrew his Application in the matter.

*Pension Plan for Employees Catholic Cemeteries Archdiocese of Toronto, Registration Number 309278*

In March 1997, the Labourers' International Union of North America, Local 506, (the "Union") asked for a hearing on behalf of two seasonal employees pursuant to s. 89 of the PBA following the Superintendent's refusal to make orders requested by the Union. The Union seeks the following orders: (1) that the Superintendent of Pensions require the Archdiocese of Toronto to admit the two seasonal employees as members of the Pension Plan for Employees Catholic Cemeteries - Archdiocese of Toronto, with service credit from their original dates of hire; (2) a declaration that the exclusion of seasonal employees from Plan membership contravenes s.31(3) of the PBA; and, (3) a declaration that the Superintendent of Pensions violated the principles of natural justice, and the PBA and Regulations, in failing to disclose to the Union and the seasonal employees, copies of submissions made by the Archdiocese of Toronto in response to the Union's request for an Order.

A pre-hearing conference was held on October 7, 1998. Hearing dates are scheduled for April 6, 7, 21 and 22, 1999.



## Commission Decisions - Applications Approved Since October 1997

*[In this section, "Commission" refers to the  
Pension Commission of Ontario]*

*Surplus Withdrawal on Plan Wind Up Pursuant to  
a Surplus Sharing Agreement - clause 8(1)(b) of  
Reg. 909 (as amended by O. Reg. 743/91) and  
s. 78(1) and 79(3) of the Act*

Most of the following Commission decisions consenting to payment of surplus were made subject to the applicant satisfying the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held November 20, 1997, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for the Hourly Employees of  
Powerlite Inc., Registration Number 585430**

Payment of surplus to Powerlite Inc. (a division of Kaufel Group Inc.), from the Pension Plan for the Hourly Employees of Powerlite Inc., Registration Number 585430, in the amount of \$346,675 as at June 30, 1995 plus investment earnings thereon to the date of payment and less any expenses incurred by the pension plan.

**(b) Retirement Plan for Employees of Playtex  
Apparel Canada Inc., Registration Number  
978395**

Payment of surplus to Canadelle Inc., from the Retirement Plan for Employees of Playtex Apparel Canada Inc., Registration Number 978395, in the amount of 30% of the surplus in the plan as at December 26, 1992, (estimated to be \$172,889) plus investment earnings thereon to the date of payment and adjusted for expenses.

**(c) Retirement Income Plan for Canadian  
Employees of Pyle-National of Canada Limited,  
Registration Number 901447**

Payment of surplus to Pyle-National of Canada Limited, from the Retirement Income Plan for Canadian Employees of Pyle-National of Canada Limited, Registration Number 901447, in the amount of 80% of the surplus in the plan as at June 1, 1997, (estimated to be \$1,104,000) plus investment earnings thereon to the date of payment and subject to adjustments for any difference between actual and expected expenses in respect of this application.

**(d) Trailmobile Canada Limited Pension Plan for  
Hourly Employees in the Bargaining Unit  
Represented by International Molders and  
Allied Workers Union Local 28 (Plan A-2),  
Registration Number 354985**

Payment of surplus to Trailmobile Canada Corp. from the Trailmobile Canada Limited Pension Plan for Hourly Employees in the Bargaining Unit Represented by International Molders and Allied Workers Union Local 28 (Plan A-2), Registration Number 354985, in the amount of 50% of the surplus in the plan as at December 31, 1996, (estimated to be \$100,000) plus investment earnings thereon to the date of payment less any additional expenses incurred in obtaining the surplus refund.





The Commission noted that it was relying upon Ms. Austin's statement in her letter dated November 12, 1997, that the union was contacted on several occasions and that Mr. Rodd Briggs, a director of the Union, advised that the Union was content with the high degree of Plan member acceptance and was not interested in becoming involved in the application.

(c) **Pension Plan for the Employees of Hedwyn Communications Inc., Registration Number 0593541**

At the Commission meeting on July 31, 1997, the Commission gave its consent to the application of Hedwyn Communications Inc. as follows:

Payment of surplus to Hedwyn Communications Inc., from the Pension Plan for Employees of Hedwyn Communications Inc., Registration Number 593541, in the amount of 50% of the surplus in the plan (approximately \$339,337.50 as at March 1, 1990) subject to adjustments as described on page 2 of the application.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting on November 20, 1997, the Pension Commission of Ontario considered the proposal of the applicant and gave its consent to the administrator:

1. setting aside, from the assets held by Manulife Financial, which currently amount to about \$814,000, sufficient reserve, based on the

opinion of the actuary, needed to restore the pensions of the two pensioners which have been cut back because of Confederation Life insolvency (the "Restoration Reserve");

2. distributing 50% of the balance of the assets held by Manulife Financial, net of the Restoration Reserve, to the benefit of those members, former members and any other persons entitled to allocations as set out in the Application;
3. refunding to the Company the balance of the assets held by Manulife Financial, net of the Restoration Reserve, after the distribution to members, former members and any other persons entitled to allocations;
4. when the final determination of the pension amounts to the two pensioners is made by the liquidator of Confederation Life, using the Restoration Reserve to fully restore as necessary the pensions for the two affected pensioners;
5. as and when the final amount of the assets have been released from Confederation Life, distributing the net remaining assets as well as any balance of the Restoration Reserve, 50% to members, former members and any other persons entitled to allocations, and refund 50% to the Company. (For clarity, it is provided that in the event that the Restoration Reserve falls short of full restoration to the two affected pensioners, the final assets will first be used to restore those benefits before distribution to the parties.)

It was noted by the Commission that the Pension Benefits Act does not permit benefits payable under a pension plan to be waived.



At the Commission meeting held December 11, 1997, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) **Pension Plan for the Employees of Rhône-Poulenc Rorer Consumer Inc., Registration Number 0378695**

Payment of surplus to Rhône Poulenc Rorer Canada Inc., from the Pension Plan for the Employees of Rhône-Poulenc Rorer Consumer Inc., Registration Number 0378695, in the amount of 50% of the surplus in the plan (estimated to be \$926,300 as at July 31, 1995), plus investment earnings and adjustments thereon to the date of payment.

(b) **Pension Plan for the Employees of Fashion Jewellery Company Limited, Registration Number 367730**

Payment of surplus to Fashion Jewellery Company Limited, from the Pension Plan for the Employees of Fashion Jewellery Company Limited, Registration Number 367730, in the amount of 100% of the surplus in the plan (estimated to be \$15,287.35 as at March 1, 1992) plus investment earnings thereon to the date of payment.

(c) **Retirement Plan for Renald Malette of Malette Inc., Registration Number 967786**

Payment of surplus to Malette Inc. from the Retirement Plan for Renald Malette of Malette Inc., Registration Number 967786, in the amount of 100% of the surplus in the plan (estimated to be \$140,066 as at August 1, 1995), plus investment earnings thereon to the date of payment.

(d) **VME Equipment of Canada Ltd. Clerical Employees' Pension Plan, Registration Number 389577**

Payment of surplus to Volvo Construction Equipment North America Ltd. from the VME Equipment of Canada Ltd. Clerical Employees' Pension Plan, Registration Number 389577, in the amount of 20% of the surplus in the plan (estimated to be \$150,880 as at June 30, 1993) plus investment earnings thereon to the date of payment and adjusted for a proportionate share of the expenses.

At the Commission meeting held January 22, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) **Pension Plan for Designated Employees of Modern Track Machinery Canada Limited, Registration Number 480749**

Payment of surplus to Modern Track Machinery Canada Limited, from the Pension Plan for Designated Employees of Modern Track Machinery Canada Limited, Registration Number 480749, in the amount of 50% of the surplus in the plan (estimated to be \$7,674 as at January 1, 1987), plus 50% of the investment earnings on the surplus to the date of payment, less 50% of legal fees and all other costs and expenses.

(b) **Retirement Plan for Gerald Brousseau of Malette Inc., Registration Number 962886**

Payment of surplus to Malette Inc., from the Retirement Plan for Gerald Brousseau of Malette Inc., Registration Number 962886, in the amount of 100% of the surplus in the plan (estimated to be \$106,719 as at August 1, 1996) plus investment earnings thereon to the date of payment, less expenses.



(c) **Retirement Plan for Donald Blouin of Malette Inc., Registration Number 967729**

Payment of surplus to Malette Inc., from the Retirement Plan for Donald Blouin of Malette Inc., Registration Number 967729, in the amount of 100% of the surplus in the plan (estimated to be \$29,118 as at August 1, 1994) plus investment earnings thereon to the date of payment, less expenses incurred in making the application.

(d) **The Retirement Plan for the Employees of Patent Scaffolding Co. - Canada Ltd., Registration Number 228056**

Payment of surplus to Patent Scaffolding Co. - Canada, A Division of Harsco Canada Limited, from the Retirement Plan for the Employees of Patent Scaffolding Co. - Canada, Inc., Registration Number 228056, in the amount of 70% of the surplus in the plan (estimated to be \$820,473.50 as at March 31, 1997) plus investment earnings thereon to the date of payment.

With respect to Mr. Bok Wong, whose whereabouts cannot be ascertained despite reasonable efforts by both the applicant and counsel for all other members and former members of the plan, the Commission is agreeable to the applicant's proposal that the amounts payable under the surplus sharing formula to Mr. Wong be paid to the Applicant, in trust for Mr. Wong, to be held in an interest bearing account until such time that Mr. Wong's whereabouts are ascertained.

At the Commission meeting held January 22, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission denied consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) **The Revised Pension Plan for the Employees of Scarborough Tire and Spring Service Ltd., Registration Number 0360768**

Denied the application of Scarborough Tire and Spring Service Ltd. pursuant to subsection 78(1) of the Act and clause 8(1)(b) of the Regulation 909 to a payment of surplus to Scarborough Tire and Spring Service Ltd., from The Revised Pension Plan for the Employees of Scarborough Tire and Spring Service Ltd., Registration Number 0360768, in the amount of 100% of the surplus in the plan (estimated to be \$6,065.49 as at June 30, 1995), plus investment earnings thereon to the date of payment.

The Commission was not satisfied that the application met the requirements of the Act and the Regulation for the following reasons:

1. it is not clear that Scarborough Tire & Spring Service Ltd. has the corporate capacity to be an applicant;
2. the applicant has not obtained the consent of the sole plan member, contrary to subclause 8(1)(b)(ii) of the Regulation;
3. the notice of application issued pursuant to subsection 78(2) of the Act was not submitted to the Superintendent prior to its transmittal contrary to subsection 28(5.1) of the Regulation;
4. the application does not contain a certified copy of the notice contrary to subsection 28(6) of the Regulation;



5. the notice of application issued pursuant to subsection 78(2) of the Act does not disclose all relevant provisions of prior plans, contrary to clause 28(5)(f) of the Regulation; and,
6. the application may not satisfy clause 79(3)(b) of the Act which requires that ... "the pension plan provides for payment of surplus to the employer on the wind up of the pension plan."

At the Commission meeting held February 26, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) **The Retirement Plan for Employees of Rubberset Company (Canada), Division of Sherwin-Williams Canada Inc., Registration Number 302588**

Payment of surplus to Sherwin-Williams Canada Inc., from The Retirement Plan for Employees of Rubberset Company (Canada), Division of Sherwin-Williams Canada Inc., Represented by the United Steelworkers of America, Local 9213, Registration Number 302588, in the amount of 50% of the surplus in the plan after all expenses have been paid out (estimated to be \$379,848 as at December 31, 1995), plus investment earnings thereon to the date of payment and less any Plan expenses.

(b) **Pension Plan for Employees of Victory Insurance Management Canada Limited, Registration Number 403790**

Payment of surplus to NRG Victory Canada Management Limited, from the Pension Plan for Employees of Victory Insurance Management Canada Limited, Registration Number 403790, in the amount of 50% of the surplus in the plan (estimated to be \$89,945 as at June 30, 1997) plus investment earnings thereon to the date of payment.

At the Commission meeting held March 26, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) **XTEC Canada Ltd. Employee Pension Plan, Registration Number 564013**

Payment of surplus to XTEC Canada Ltd., from the XTEC Canada Ltd. Employee Pension Plan, Registration Number 564013, in the amount of 50% of the surplus (estimated to be \$832,994 as at September 30, 1997) adjusted for investment earnings and actual expenses incurred in connection with the wind up of the Pension Plan.

At the Commission meeting held April 30, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) **Pension Plan for Significant Shareholders of N.V. Freeman & Sons Limited, Registration Number 409425**

Payment of surplus to N.V. Freeman & Sons Limited, from the Pension Plan for Significant Shareholders of N.V. Freeman & Sons Limited, Registration Number 409425, in the amount of \$94,722 as at December 31, 1992, plus investment earnings thereon (less final settlement fees) to the date of payment.





(b) **The Salaried Employees' Pension Plan of Canada Alloy Castings Ltd., Registration Number 260158**

Payment of surplus to Canada Alloy Castings Ltd. from The Salaried Employees' Pension Plan of Canada Alloy Castings Ltd., Registration Number 260158, in the amount of 60% of the surplus in the plan (estimated to be \$487,912 as at July 27, 1996) plus investment earnings thereon to the date of payment, less expenses and fees related to the wind up of the Pension Plan.

(c) **VME Equipment of Canada Ltd. Retirement Program for Salaried Employees at St. Thomas, Ontario, Registration Number 354589**

Payment of surplus to Volvo Construction Equipment North America Ltd. from the VME Equipment of Canada Ltd. Retirement Program for Salaried Employees at St. Thomas, Ontario, Registration Number 354589, in the amount of 20% of the surplus in the plan (estimated to be \$467,443.00 as at June 30, 1997) plus investment earnings thereon to the date of payment and adjusted for a proportionate share of the expenses.

(d) **Unisys Canada Inc. Pension Plan, Registration Number 354670**

Subject to certain conditions, payment of surplus to Unisys Canada Inc. in the amount of the Company Share of the Net Surplus as defined in the Application, which is estimated in the Application to be \$43,861,000 as at December 15, 1997. The Net Surplus is estimated in the Application to be \$70,122,000 as at December 15, 1997.

Unisys requested that the Company Share be paid to Unisys in three parts: first, by the payment to Unisys of an Initial Allocation of \$21,000,000 (the "Initial Payment"); second, by monthly payments to Unisys of 90% of the company's 50%

share of the remaining Net Surplus (the "Subsequent Payments"); and third, by payment to Unisys of the balance of the company's 50% share of the remaining Net Surplus (the "Final Payment").

The Commission's consent is given in two parts: first, its consent to the payment of the Initial Payment and Subsequent Payments; and second, its consent to the payment of the Final Payment. Neither part of the Commission's consent shall become effective until certain conditions are satisfied.

The first part of the Commission's consent, regarding the Initial Payment and the Subsequent Payments, shall not become effective until Unisys has provided to the satisfaction of the Commission fully executed documents in substantially the same form and content as those contained in the Application and listed in an Appendix to the Minutes.

The second part of the Commission's consent, regarding the Final Payment, shall not become effective until Unisys demonstrates to the satisfaction of the Commission that the Participants Share of surplus, as defined in the Application, has been paid or otherwise provided for.

(e) **Consolidated Pension Plan for Employees of Canadian Affiliates of BTR Canada Holdings, Inc., Registration Number 559716**

Payment of surplus to Not HK Canada Inc. from the Consolidated Pension Plan for Employees of Canadian Affiliates of BTR Canada Holdings, Inc., Registration Number 559716, in the amount of 50% of the surplus in the plan (estimated to be \$280,000 as at November 4, 1994) plus investment earnings thereon to the date of payment less expenses.



At the Commission meeting held May 28, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) **Pension Plan of Scott's Hospitality Inc. For Geoff P. Davies, Registration Number 978957**

Payment of surplus to Laidlaw Inc. from the Pension Plan of Scott's Hospitality Inc. for Geoff P. Davies, Registration Number 978957, in the amount of 91.031% of the surplus in the plan (estimated to be \$379,537.71 as at December 31, 1997) plus investment earnings thereon to the date of payment, with adjustments for expenses associated with the wind up and surplus application.

(b) **Procter & Gamble Inc. Core Pension Plan, Registration Number 681163**

Payment of surplus to Procter & Gamble Inc. from the Procter & Gamble Inc. Core Pension Plan, Registration Number 681163, in the amount of approximately \$3,963,000 as at December 31, 1996, plus investment earnings and less costs and expenses and any adjustments resulting from annuity purchases to the date of payment.

At the Commission meeting held June 25, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) **Sherman Sand & Gravel Limited, Pension Plan for Group "A" Employees, Registration Number 907832**

Payment of surplus to Sherman Sand and Gravel Limited from the Sherman Sand & Gravel Limited Pension Plan for Group "A" Employees, Registration Number 907832, in

the amount of 100% of the surplus in the plan (estimated to be \$333,247.52 as at November 130, 1997) plus investment earnings thereon to the date of payment.

(b) **Pension Plan for Employees of William Knell and Company Limited, Registration Number 265728**

Payment of surplus to William Knell and Company Limited from the Pension Plan for Employees of William Knell and Company Limited, Registration Number 265728, in the amount of 100% of the surplus in the plan (estimated to be \$84,393 as at July 1, 1996) plus investment earnings thereon to the date of payment.

(c) **The Pension Plan for Hourly Employees of Waterbury Farrel Technologies Ltd. (formerly Wean Canada Ltd.), Registration Number 315259**

Payment of surplus to Anker-Holth Limited from The Pension Plan for Hourly Employees of Waterbury Farrel Technologies Ltd. (formerly Wean Canada Ltd.), Registration Number 315259, in the amount of 50% of the surplus in the plan (estimated to be \$247,544.00 as at November 30, 1995) plus investment earnings thereon to the date of payment.

At the Commission meeting held July 28, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) **Sun Alliance Canadian Staff Pension Plan, Registration Number 328310**

Payment of surplus to Royal Sun Alliance Insurance Company of Canada from the Sun Alliance Canadian Staff Pension Plan, in the



amount of 50% of the surplus in the plan (estimated to be \$1,352,600 as at June 30, 1994) plus investment earnings thereon to the date of payment.

**(b) Pension Plan for Bargaining Employees of the Toronto Warehouse of Western Star Trucks Inc., Registration Number 587063**

Payment of surplus to Western Star Trucks Inc. from the Pension Plan for Bargaining Employees of the Toronto Warehouse of Western Star Trucks Inc., Registration Number 587063, in the amount of 50% of the surplus in the plan (estimated to be \$748,437 as at June 1, 1997) plus investment earnings thereon to the date of payment adjusted for expenses.

**(c) Pension Plan of Sisters of Charity of Ottawa, Registration Number 360362**

Payment of surplus to the Sisters of Charity of Ottawa from The Pension Plan for Sisters of Charity of Ottawa, Registration Number 360362, in the amount of 100% of the surplus in the plan (\$14,082,980 as at December 31, 1997) plus investment earnings thereon to the date of payment.

At the Commission meeting held September 24, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Retirement Plan for Employees of Welded Tube of Canada Limited, Registration Number 974675**

Payment of surplus to Welded Tube of Canada Limited from the Retirement Plan for Employees of Welded Tube of Canada Limited, Registration Number 974675, in the amount of 100% of the

surplus in the plan (\$437,390 as at December 31, 1995) plus investment earnings thereon to the date of payment less any expenses incurred in making the application.

**(b) Terjess Holdings Inc. Executive Pension Plan, Registration Number 984492**

Payment of surplus to Terjess Holdings Inc. from the Terjess Holdings Inc. Executive Pension Plan, Registration Number 984492, in the amount of \$68,347 as at May 1, 1997, plus investment earnings thereon to the date of payment and less interest paid in respect of final payment of wind-up benefits and less expenses incurred in connection with the Application.

**(c) Risdon Cosmetic Containers Inc. Executive Pension Plan, Registration Number 463984**

Payment of surplus to Risdon \ AMS (Canada) Inc. from Risdon Cosmetic Containers Inc. Executive Pension Plan, Registration Number 463984, in the amount of \$37,169 as at December 1, 1988, plus investment earnings thereon to the date of payment.

**(d) Staff Pension Plan for Employees of Brant Dairy Company, Limited, Registration Number 407841**

Payment of surplus to Natrel Inc. from Staff Pension Plan for Employees of Brant Dairy Company, Limited, Registration Number 407841, in the amount of \$323,309 as at December 31, 1994, plus investment earnings thereon to the date of payment and any adjustments for expenses.

**(e) The Retirement Plan for Raymond Malette of Malette Inc., Registration Number 0967745**

Payment of surplus to Malette Inc. from The Retirement Plan for Raymond Malette



of Malette Inc., Registration Number 0967745, in the amount of \$95,196 as at September 30, 1996, plus investment earnings thereon to the date of payment less any expenses.

**(f) The Retirement Plan for Rejean Malette of Malette Inc., Registration Number 0967778**

Payment of surplus to Malette Inc. from The Retirement Plan for Rejean Malette of Malette Inc., Registration Number 0967778, in the amount of \$26,440 as at September 30, 1996, plus investment earnings thereon to the date of payment less any expenses.

**(g) The Retirement Plan for Real Malette of Malette Inc., Registration Number 0967737**

Payment of surplus to Malette Inc. from The Retirement Plan for Real Malette of Malette Inc., Registration Number 0967737, in the amount of \$105,142 as at December 1, 1996, plus investment earnings thereon to the date of payment less any expenses.

**(h) Plessey Canada (1987) Limited Pension Plan, Registration Number 940312**

Payment of surplus to Plessey Canada (1987) Limited from the Plessey Canada (1987) Limited Pension Plan, Registration Number 940312, in the amount of \$385,074 as at June 30, 1997, adjusted to reflect investment earnings or losses and expenses.

Payment to Plessey Canada (1987) Limited of 50% of any further Plan assets received from the liquidator of Confederation Life, with the balance to be distributed to the employees on the same basis as other surplus funds.

**(i) Pension Plan for the Executive Employees of E. & E. Seegmiller Limited and Associated Company, Registration Number 992503**

Payment of surplus to E. & E. Seegmiller Limited and Associated Company from Pension Plan for the Executive Employees of E. & E. Seegmiller Limited and Associated Company, Registration Number 992503, in the amount of \$163,632 as at April 30, 1996, plus investment earnings thereon to the date of payment, and adjusted for expenses.

**Applications Under Section 8 of the Regulation, and subsection 78(1) of the PBA - Request for Consent of the Commission to Surplus Withdrawal on Plan Wind Up to be filed in Court**

At the Commission meeting held November 20, 1997, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulation, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Bull Moose Tube Limited Salaried Employees' Pension Plan, Registration Number 221887**

Payment of surplus to the Applicant, Bull Moose Tube Limited from the Bull Moose Tube Limited Salaried Employees' Pension Plan, Registration Number 221887, in the amount of \$90,000.00.





At the Commission meeting held December 11, 1997, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulation, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Hourly-Rated Unionized Employees of Ivaco Inc. at its Lundy Steel Division in Dunnville, Ontario, Registration Number 548073**

Payment of surplus to the Applicant, Ivaco Inc., from the Pension Plan for Hourly-Rated Unionized Employees' of Ivaco Inc. at its Lundy Steel Division in Dunnville, Ontario, Registration Number 548073, in the amount of \$245,966 as at June 30, 1989 plus investment earnings thereon to the date of payment less permitted expenses in accordance with the Court Order.

At the Commission meeting held January 22, 1998, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulation, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Retirement Income Plan for Union Employees of International Tools (1973) Limited, Registration Number 379859**

Payment of surplus to the Applicant, Ventra Group Inc., from the Retirement Income Plan for Union Employees of International Tools (1973) Limited, Registration Number 379859, in the amount of \$114,643 as at September 11, 1987 plus investment earnings thereon to the date of payment minus any expenses for professional services related to the wind up.

At the Commission meeting held March 26, 1998, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulation, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Salaried Employees of Dorr-Oliver Limited (Text A and Text B), Registration Number 341495**

Payment of surplus to the Applicant, QIT-fer et Titane Inc., from the Pension Plan for Salaried Employees of Dorr-Oliver Limited (Text A and Text B), Registration Number 341495, in the amount of 66% of the surplus (estimated to be \$3,459,700 as at May 1, 1987), plus investment earnings thereon to the date of payment, less 66% of the legal costs payable from the surplus pursuant to an order of the Honourable Mr. Justice Cameron made January 9, 1997, less 66% of the reasonable costs and expenses related to the continuing administration and wind up of the plan.

**(b) Pension Plan for Hourly-Paid Employees of Dorr-Oliver Limited, Registration Number 392415**

Payment of surplus to the Applicant, QIT-fer et Titane Inc., from the Pension Plan for Hourly-Paid Employees of Dorr-Oliver Limited, Registration Number 392415, in the amount of 66% of the surplus (estimated to be \$620,100 as at May 1, 1987), plus investment earnings thereon to the date of payment, less 66% of the legal costs payable from the surplus pursuant to an order of the Honourable Mr. Justice Cameron made January 9, 1997, less 66% of the reasonable costs and expenses related to the continuing administration and wind up of the plan.



(c) **The Great-West Life Assurance Company Canadian Agents' Pension Plan, Registration Number 355271**

Payment of surplus to the Applicant, The Great-West Life Assurance Company from The Great-West Life Assurance Company Canadian Agents' Pension Plan, Registration Number 355271, estimated to be \$1,972,979 as at December 31, 1985, plus investment earnings thereon to the date of payment, minus: (i) the legal fees and disbursements incurred by the Applicant in respect of this Application; and, (ii) all other costs and expenses related to the continuing administration and wind up of the plan.

As required by the Quebec Supplemental Pension Plans Act, payment of surplus relating to Quebec members and former members will be determined by arbitration. The surplus allocable to Quebec members and former members is estimated to be \$331,800 as at March 31, 1997.

At the Commission meeting held September 24, 1998, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) **Pension Plan for Employees of Contractors Machinery & Equipment and Grove Industrial Products, Divisions of Kidde Canada Limited, Registration Number 243907**

Payment of surplus to the Applicant, 833610 Ontario Inc., from the Pension Plan for Employees of Contractors Machinery & Equipment and Grove Industrial Products, Divisions of Kidde Canada Limited, Registration Number 243907, in the amount of 92.4% of the surplus (estimated to total \$4,094,451 as at September 30, 1997), plus investment earnings

thereon to the date of payment, less any discount realized on the liquidation of assets held by Confederation Life Insurance Company.

As required by the Quebec Supplemental Pension Plans Act, payment of surplus allocable to Quebec members and former members will be determined by arbitration. The amount subject to arbitration is estimated to be 7.6% of the surplus, or \$313,032 as at September 30, 1997.

**Applications under subsection 78(1) of the PBA and section 10 of the Regulation Request for Consent of the Commission to Surplus Withdrawal from a Continuing Plan**

At the Commission meeting held December 11, 1997, the Commission consented pursuant to subsection 78(1) of the PBA and s. 10 of the Regulations, to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) **Eaton Retirement Annuity Plan III, 1037035**

Payment of surplus to The T. Eaton Company Limited ("Eaton's") from the Eaton Retirement Annuity Plan III ("ERAP3") in the amount of the "Company's Surplus Share" as set out in the Application. The full amount of the Company's Surplus Share has been estimated in the Application to be approximately \$26,605,000 as at November 1, 1997.

Eaton's requested that the Company's Surplus Share be paid to Eaton's in two parts: first, by the payment to Eaton's of an initial payment from the Company's Surplus Share, as defined in the Application, which is estimated in the Certification to be \$23,300,000 as at December 8, 1997 (the "Initial Payment"); and second, by payment to Eaton's of the balance of the Company's Surplus Share (the "Subsequent Payment").



The Commission's consent is given in two parts: first, its consent to payment of the Initial Payment; and second, its consent to payment of the Subsequent Payment. Neither part of the Commission's consent shall become effective until certain conditions are satisfied.

The first part of the Commission's consent, regarding the Initial Payment, shall not become effective until Eaton's has provided to the Commission fully executed documents satisfactory to the Commission in substantially the same form and content as those contained in Eaton's Application and listed in the Appendix to the minutes.

The second part of the Commission's consent, regarding the Subsequent Payment, shall not become effective until Eaton's demonstrates to the satisfaction of the Commission that the Members' Surplus Share, as defined in the Application, has been paid or otherwise provided for.

**(b) Pension Plan of The T. Eaton Company Limited for C. Reginald Hunter, 1031780**

Payment of surplus to The T. Eaton Company Limited ("Eaton's") from the Pension Plan of the T. Eaton Company Limited for C. Reginald Hunter in the amount of the "Ongoing Surplus Withdrawal Amount" as set out in the Application. The full amount of the Ongoing Surplus Withdrawal Amount has been estimated in the Application to be approximately \$1,456,000 as at September 30, 1997.

Eaton's requested that the Ongoing Surplus Withdrawal Amount be paid to Eaton's in two parts: first, by the payment to Eaton's from the Ongoing Surplus Withdrawal Amount of an initial payment referred to in the Application as the "December Withdrawal Amount", which is estimated in the Certification to be \$1,400,000;

and second, by payment to Eaton's of the balance of the Ongoing Surplus Withdrawal Amount (referred to in the Application as the "February Withdrawal Amount").

The Commission's consent is given in two parts: first, its consent to payment of the December Withdrawal Amount; and second, its consent to payment of the February Withdrawal Amount.

**(c) Pension Plan of The T. Eaton Company Limited for Roy Evans, 1031798**

Payment of surplus to The T. Eaton Company Limited ("Eaton's") from the Pension Plan of the T. Eaton Company Limited for Roy Evans in the amount of the "Ongoing Surplus Withdrawal Amount" as set out in the Application. The full amount of the Ongoing Surplus Withdrawal Amount has been estimated in the Application to be approximately \$1,460,000 as at September 30, 1997.

Eaton's requested that the Ongoing Surplus Withdrawal Amount be paid to Eaton's in two parts: first, by the payment to Eaton's from the Ongoing Surplus Withdrawal Amount of an initial payment referred to in the Application as the "December Withdrawal Amount", which is estimated in the Certification to be \$1,410,000; and second, by payment to Eaton's of the balance of the Ongoing Surplus Withdrawal Amount (referred to in the Application as the "February Withdrawal Amount").

The Commission's consent is given in two parts: first, its consent to payment of the December Withdrawal Amount; and second, its consent to payment of the February Withdrawal Amount.



(d) **Pension Plan of The T. Eaton Company Limited for R.A. Hubert, 1029321**

Payment of surplus to The T. Eaton Company Limited ("Eaton's") from the Pension Plan of the T. Eaton Company Limited for R.A. Hubert in the amount of the "Ongoing Surplus Withdrawal Amount" as set out in the Application. The full amount of the Ongoing Surplus Withdrawal Amount has been estimated in the Application to be approximately \$1,105,000 as at September 30, 1997.

Eaton's requested that the Ongoing Surplus Withdrawal Amount be paid to Eaton's in two parts: first, by the payment to Eaton's from the Ongoing Surplus Withdrawal Amount of an initial payment referred to in the Application as the "December Withdrawal Amount", which is estimated in the Certification to be \$1,050,000; and second, by payment to Eaton's of the balance of the Ongoing Surplus Withdrawal Amount (referred to in the Application as the "February Withdrawal Amount").

The Commission's consent is given in two parts: first, its consent to payment of the December Withdrawal Amount; and second, its consent to payment of the February Withdrawal Amount.

(e) **Pension Plan of The T. Eaton Company Limited for Rex P. Prangley, 1031806**

Payment of surplus to The T. Eaton Company Limited ("Eaton's") from the Pension Plan of the T. Eaton Company Limited for Rex P. Prangley in the amount of the "Ongoing Surplus Withdrawal Amount" as set out in the Application. The full amount of the Ongoing Surplus Withdrawal Amount has been estimated in the Application to be approximately \$938,000 as at September 30, 1997.

Eaton's requested that the Ongoing Surplus Withdrawal Amount be paid to Eaton's in two parts: first, by the payment to Eaton's from the Ongoing Surplus Withdrawal Amount of an initial payment referred to in the Application as the "December Withdrawal Amount", which is estimated in the Certification to be \$890,000; and second, by payment to Eaton's of the balance of the Ongoing Surplus Withdrawal Amount (referred to in the Application as the "February Withdrawal Amount").

The Commission's consent is given in two parts: first, its consent to payment of the December Withdrawal Amount; and second, its consent to payment of the February Withdrawal Amount.

**Applications Approved under subsections 63(7) and (8) of the PBA  
Return of Member Contributions**

At the Commission meeting held December 11, 1997, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

(a) **Retirement Income Plan for the Salaried Employees of Cabot Canada Ltd.,  
Registration Number 213231**

Refund of member contributions from the Retirement Income Plan for the Salaried Employees of Cabot Canada Ltd., Registration Number 213231, in the amount of \$51,994.46 as at June 1, 1997, plus investment earnings to the date of payment.





(b) **Revised Pension Plan for the Teaching Staff of the Royal Conservatory of Music of Toronto, Registration Number 213231**

Refund of member contributions from the Revised Pension Plan for the Teaching Staff of the Royal Conservatory of Music of Toronto, Registration Number 686170, in the aggregate amount of \$782,913.61 as at December 31, 1995, plus investment earnings to the date of payment.

At the Commission meeting held December 11, 1997, the Commission denied consent pursuant to subsections 63(7) & (8) of the PBA, the refund of member required contributions as follows:

(a) **Canada Colors and Chemicals Limited Employees' Pension Plan, Registration Number 233080**

Denied the application for a refund of member contributions from the Canada Colors and Chemicals Limited Employees' Pension Plan, Registration Number 233080, in the amount of \$119,161.39 as at May 1, 1997, plus investment earnings to the date of payment.

The reason for the decision is as follows:

Since the refund of member contributions requested in the application applies only to the President of the Company, the application does not provide for equitable treatment of all individuals within the membership category. Accordingly, the Commission exercised its discretion and declined to consent to the application since it benefitted only one member of the plan.

At the Commission meeting held January 22, 1998, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

(a) **Ault Foods Limited Retirement Plan for Salaried Non-Union Employees, Registration Number 907295**

Refund of member contributions from the Ault Foods Limited Retirement Plan for Salaried Non-Union Employees, Registration Number 907295, in the aggregate amount of \$71,803 as at March 1, 1997, plus investment earnings thereon to the date of payment, as shown in the letter dated January 8, 1998, from Mr. Aubin.

At the Commission meeting held February 26, 1998, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

(a) **Retirement Plan for Employees of Raytheon Canada Limited, Registration Number 297275**

Refund of member contributions from the Retirement Plan for Employees of Raytheon Canada Limited, Registration Number 297275, in the aggregate amount of \$1,777,118.38 as at September 30, 1997, plus credited interest at an annual rate of 5.33% to the date of payment.

At the Commission meeting held March 26, 1998, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

(a) **Canada Colors and Chemicals Limited Employees' Pension Plan, Registration Number 233080**

Refund of member contributions from the Canada Colors and Chemicals Limited Employees' Pension Plan, Registration Number 233080, in the amount of \$119,161.39 as at May 1, 1997, plus credited interest to the date of payment.



At the Commission meeting held April 30, 1998, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

(a) **Parkdale International Limited Salaried Employees' Pension Plan, Registration Number 425801**

Refund of member contributions from the Parkdale International Limited Salaried Employees' Pension Plan, Registration Number 425801, in the amount of \$86,000 as at January 1, 1997, plus credited interest to the date of payment.

(b) **Ontario Teachers' Federation Final Average Earnings Pension Plan, Registration Number 597252**

Refund of member contributions from the Ontario Teachers' Federation Final Average Earnings Pension Plan, Registration Number 597252, in the amount of \$88,300 as at July 1, 1997, plus credited interest to the date of payment.

At the Commission meeting held June 25, 1998, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

(a) **Pension Plan for Employees of The Professional Institute of the Public Service of Canada, Registration Number 293597**

Refund of member contributions from the Pension Plan for Employees of The Professional Institute of the Public Service of Canada, Registration Number 293597, in the amount of \$844,561 as at January 1, 1997, plus credited interest to the date of payment.

(b) **Public Service Pension Plan, Registration Number 208777**

Given the circumstances of this case and the written submissions received from the

applicant and the Superintendent of Pensions, as follows:

Submissions of the Superintendent of Pensions

Superintendent of Pensions' Book of Authorities

Reply of the Ontario Pension Board Authorities Relied on by the Ontario Pension Board

Reply Submissions of the Superintendent of Pensions

Refund of member contributions from the Public Service Pension Plan, Registration Number 208777, in the aggregate amount of \$102,506.69 as at December 31, 1997, plus credited interest to the date of payment.

At the Commission meeting held September 24, 1998, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

(a) **Revised Pension Plan for the Employees of Canadian Hair Cloth Co. Limited, Registration Number 213033**

Refund of member contributions from the Revised Pension Plan for the Employees of Canadian Hair Cloth Co. Limited, Registration Number 213033, in the amount of \$398,248.73 as at December 1, 1996, plus interest to the date of payment.

**Applications Approved under section 105 and subsection 78(4) of the PBA Extension of Time and Return of Overpayment**

At the Commission meeting held December 11, 1997, the Commission consented to the refund of an overpayment as follows:



(a) **Hospitals of Ontario Pension Plan,  
Registration Number 0346007**

In light of the representations in the application set out in letters dated October 20, 1997, and November 5, 1997, from Mr. Ron Laffin of HOOPP that an overpayment has been made, the Pension Commission of Ontario consented:

1. pursuant to section 105 of the Act, to extend the time limit, specified under subsection 78(4) of the Act, for filing the application;
2. pursuant to subsection 78(4) of the Act, to a refund of \$50.83 to Lennox Addington Community Mental Health Centre, a participating employer under the Hospitals of Ontario Pension Plan, Registration Number 0346007, which represents the overpayment made to the plan in 1996; and,
3. pursuant to subsection 78(4) of the Act, to a refund of \$1,118.39 to Beechgrove Children's Centre, a participating employer under the Hospitals of Ontario Pension Plan, Registration Number 0346007, which represents the overpayment made to the plan in 1996.

At the Commission meeting held March 26, 1998, the Commission consented to the refund of an overpayment as follows:

(a) **Pension Plan for Employees of the Ontario Public Service Employees Union, Registration Number 339861**

The Pension Commission of Ontario:

- (a) made an order pursuant to section 105 of the Act, to extend the time limit specified under subsection 78(4) of the Act, for filing the application; and,
- (b) consented pursuant to subsection 78(4) of the Act, to a refund to the applicant from the Pension Plan for Employees of the

Ontario Public Service Employees Union, Registration Number 339861, of \$116,492.24 which represents an employer overpayment to the pension fund made in February 1997.

**Pension Benefits Guarantee Fund ("PBGF")**

*Notice of Proposed Declarations*

On January 22, 1998, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

(a) **Pension Plan for Designated Employees of Saracini Investments Limited, Registration Number 529339**

On April 30, 1998, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

(a) **The Pension Plan of Union Drawn Steel Company Limited for Eligible Salaried Employees Effective December 15, 1955, Registration Number 312124**

*Declaration that the PBGF Applies to Pension Plans*

On February 26, 1998, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies to the following pension plan:

(a) **Pension Plan for Designated Employees of Saracini Investments Limited, Registration Number 529339**



On June 25, 1998, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies to the following pension plan:

- (a) **The Pension Plan of Union Drawn Steel Company Limited for Eligible Salaried Employees Effective December 15, 1955, Registration Number 312124**

*Allocations, subsection 34(7) of Regulation 909 under the PBA*

On December 11, 1997, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

- (a) **Pension Plan for Salaried Employees of Carpita Corporation and Subsidiary and Affiliated Companies, Registration Number 0598425**

Allocate and pay an amount not to exceed \$310,701.53 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation.

On February 26, 1998, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

- (a) **Pension Plan for Designated Employees of Saracini Investments Limited, Registration Number 529339**

Allocate and pay the amount of \$39,293.84, to provide interim funding to the Pension Plan, as follows:

- (a) \$8,302.58, being the amount of \$638.86 per month for ongoing monthly pension payments for the period December 1, 1997 to December 31, 1998;
- (b) a lump sum payment in the amount of \$7,025.26, which represents retroactive pension payments for the period of January 1, 1997 to November 31, 1997;
- (c) wind up administration costs of \$23,966.00 as follows:

Administrator	\$17,700
Plan Trustee	\$ 1,266
Plan Actuary	\$ 5,000

On June 25, 1998, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

- (a) **The Pension Plan of Union Drawn Steel Company Limited for Eligible Salaried Employees Effective December 15, 1955, Registration Number 312124**

Allocate and pay an amount not to exceed \$928,568 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation.





## Commission Decision with Reasons

INDEX NO.	XDEC-37
PLAN	Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, (PN 302851)
DATE OF AMENDED DECISION	May 13, 1998
AMENDMENT PUBLISHED	Telex - May 13, 1998

**In the Matter of the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "Act");**

**and in the Matter of** the decision of the Superintendent of Pensions for Ontario dated January 13, 1997, with respect to the transfer of assets from the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the "Pension Plan") to the St. Joseph's Health Centre Pension Plan, the Providence Centre Pension Plan, and the Morrow Park Plan (the "New Plans");

**and in the Matter of** a Hearing in accordance with subsection 89(8) of the Act.

### Between

THE CANADIAN UNION OF PUBLIC  
EMPLOYEES, LOCALS No. 1144 and 1590

-and-

SUPERINTENDENT OF PENSIONS, THE SISTERS  
OF ST. JOSEPH FOR THE DIOCESE OF  
TORONTO IN UPPER CANADA, ST. MICHAEL'S  
HOSPITAL, ST. JOSEPH'S HEALTH CENTRE  
and PROVIDENCE CENTRE

Respondents

### Before

C.S. (Kit) Moore, Chair  
M. Elizabeth Greville, Member  
David E. Wires, Member

### Appearances

For the applicant:

Mr. M. Zigler  
Mr. R. Tomassini

For the Superintendent of Pensions:

Ms. D. McPhail  
Ms. L. McDonald

For the respondents:

Mr. M. Freiman  
Mr. G. Winfield  
Mr. J. Buhlman  
Ms. F. Kristjanson  
Mr. J. Leon  
Ms. A. Finn



## Hearing Date

January 27, 1998  
Toronto, Ontario

## Amended Decision Released

May 13, 1998  
Toronto, Ontario

## Reasons for the Decision

### *Nature of the Application*

The Superintendent of Pensions for Ontario (the "Superintendent") refused to grant relief requested by the Canadian Union of Public Employees Locals No. 1144 and 1590 ("CUPE"), including a request by CUPE that the Superintendent issue an order under s. 87(1) of the Act that the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the "Pension Plan") and its successors constitute a multi-employer pension plan (a "MEPP"). In a letter written to the Superintendent and other interested parties, CUPE indicated its intention to appeal certain decisions of the Superintendent. Subsequently, a Request for Hearing under s. 89 of the Act was submitted to the Pension Commission of Ontario (the "Commission").

Following an initial pre-hearing conference and telephone conference call among the parties, a further pre-hearing conference was held at which a preliminary question arose as to whether the Commission had jurisdiction to conduct the hearing. The parties agreed to argue the issue of jurisdiction in advance of the merits. The Commission received written submissions on the matter, heard oral argument and advised the parties, by way of letter dated March 13, 1998, that it had determined that the Commission had jurisdiction to determine whether the pension plan is a MEPP under the Act. These are the written reasons for that decision.

### *The Facts*

The following facts are included in the Agreed Statement of Facts on Jurisdictional Issues submitted to the hearing panel with the consent of all the parties to this hearing.

Effective January 1, 1958, the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada (the "Sisters") established a pension plan for certain employees, and amended the plan from time to time. In Article 1.20 of the Pension Plan, amended and restated as at January 1, 1992, "employee" is defined as meaning "any employee who is employed on a full-time or less than full-time basis at a Hospital", but not meaning "any person who is a casual or temporary employee of the Hospital or who is remunerated under contract for special services or on a fee for service basis".

"Employer" is defined in Article 1.21 of the Plan as meaning "for the purposes of this Plan only, the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada in its personal capacity as employer with respect to the Hospitals". The term "hospital" is defined in Article 1.23 of the Plan as follows:

"Hospital" means with respect to an Employee either Fort Bonne Association of Ontario, St. Joseph's Health Centre, St. Michael's Hospital, Providence Centre (formerly Providence Villa and Hospital) or the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada with respect to the employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada whose duties relate to the aforementioned hospitals plus any other health facility of the Sisters of St. Joseph as designated by the Sisters of St. Joseph from time to time.

The term "administrator" is defined in Article 1.03 of the Plan as meaning "the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada in its capacity as administrator under the Pension Benefits Act and Income Tax Act".



Article 17.01 of the Plan deals with amendment of the Plan, and states:

The Sisters of St. Joseph may from time to time by instrument in writing vary or amend any of the provisions of the Plan provided that no such variation or amendment shall be made which would adversely affect the inherent or acquired rights of Members which have accrued to them as a result of their employment with the Employer or the inherent or acquired rights of any other person entitled to a benefit under the Plan, prior to the date of such variation or amendment. The decision of the Sisters of St. Joseph on the question of whether any proposed variation or amendment adversely affects the inherent or acquired rights of Members which have accrued to them as a result of their employment with the Employer prior to the date of such variation or amendment shall be conclusive.

Nothing in the Trust Agreement or in this Plan shall be deemed to permit any variation or amendment to the Trust Agreement or this Plan which would alter the main purpose of the Plan which is to provide for Retirement Benefits or would permit reversion to the Employer or the Sisters of St. Joseph of any part of the assets comprised in the Pension Fund prior to the provision for all liabilities with respect to Members, Spouses, former Spouses, joint annuitants, Dependent Children and their Beneficiaries under this Plan.

In the event that any provision of the Plan is less favourable than is required by the terms of any Applicable Legislation, the Plan shall be amended accordingly but only to the extent necessary to remedy any such deficiencies.

Notwithstanding the above, the Plan may be amended at any time to reduce any Member's benefit entitlement under this Plan to avoid the revocation of the Plan as a Registered Pension Plan subject to the consent of the Pension Commission of Ontario, if required, and in accordance with Applicable Legislation.

A Collective Agreement was in place from 1976 for full-time employees and from 1988 for part-time employees between Providence Centre (called the "Hospital" in the Collective Agreement) and the Canadian Union of Public Employees, Local 1590. A Collective Agreement was in place from 1968 to the present between St. Joseph's Health Centre (called the "Health Centre" in the Collective Agreement) and the Canadian Union of Public Employees, Local 1144.

In 1994, the Commission received a letter written on behalf of the Sisters, stating that St. Joseph's Health Centre and Providence Centre would be separately incorporated on January 1, 1995, that the Sisters' plan would be split as of that date so that two new plans would apply to the two new corporations, and that St. Michael's Hospital would be incorporated on January 1, 1996, at which time the Sisters' plan would become the St. Michael's Hospital Plan. On December 6, 1994, the Sisters sent letters to Pension Plan participants, informing them of the Sister's intent to incorporate Providence Centre and St. Joseph's Health Centre on December 31, 1994 and to incorporate St. Michael's Hospital a year later.

The Sisters amended and restated its plan as at January 1, 1995. The Preamble to the amended and restated plan states in part:

Effective January 1, 1995, all assets and liabilities with respect to the employees or former employees of the St. Joseph's Health Centre and the employees or former employees of Providence Centre, who were Members or the Spouses, former Spouses, Beneficiaries, Dependent Children or joint annuitants of former Members entitled to benefits pursuant to the terms of the Plan as of December 31, 1994, subject to regulatory approval, will be transferred to the St. Joseph's Health Centre Pension Plan and the Providence Centre Pension Plan, respectively.

On December 22, 1995, the Sisters applied to the Pension Commission of Ontario for registration of a pension plan amendment to "allow for change in Administrator". The amendment was pursuant to a Resolution of the Board of Directors of the Sisters which provided in part:

Subject to the necessary approvals from the appropriate regulatory authorities, the following provisions are hereby added to section 17.02 of the Plan effective December 31, 1995:

The Administrator may transfer and assign to a Hospital its interest, rights and obligations as Administrator of the Plan, and including without limitation any powers it may have in any capacity to amend or terminate the Plan and Trust Agreement, by entering into a succession agreement with the Hospital. In such event, the Plan shall continue in force, with the Hospital acting as successor Administrator as of the effective date specified in the succession agreement. Such succession agreement shall be valid and binding if executed by one or more representatives of the Administrator and Hospital.

During 1996, the Superintendent received submissions written on behalf of CUPE, opposing the Sisters' splitting of the Pension Plan and transfer of assets. The Superintendent also received written submissions made on behalf of the Sisters, responding to the submissions made on behalf of CUPE.

On January 13, 1997, the Superintendent wrote to CUPE's legal counsel refusing to grant the relief requested in CUPE's submissions. In particular, the Superintendent refused to issue an order under s. 87(1) that the Pension Plan and any of its successors constitute a MEPP established pursuant to a collective agreement or a trust agreement within the meaning of

s. 8(1)(e) of the Act. On the same day, the Superintendent consented to transfers of assets from the Pension Plan to the St. Joseph's Health Centre Plan and to the Providence Centre Plan.

On January 27, 1997, on CUPE's behalf, letters were sent to the Superintendent and to counsel for the Sisters stating that CUPE intended to appeal the Superintendent's decisions dated January 13, 1997 and requesting that transfers of assets be held in abeyance pending the outcome of the appeal.

On February 11, 1997, a Request for Hearing Under Section 89 of the Act was submitted to the Commission on CUPE's behalf.

### *The Issue*

The preliminary issue for determination at this time is:

Does the Commission have the authority to hold a hearing, pursuant to s. 89 of the Act, into whether or not the Pension Plan constitutes a MEPP within the meaning of s. 8(1)(e) of the Act, where the Superintendent has refused to make an order, pursuant to s. 87(1) of the Act, that the Pension Plan and any of its successors constitute a MEPP established pursuant to a collective agreement or a trust agreement within the meaning of s. 8(1)(e) of the Act, and a corresponding order directing that the Pension Plan be administered by a board of trustees of whom at least half are member representatives?

### *The Arguments*

The Sisters' arguments against the Commission's jurisdiction in this matter are supported by the other respondents and include reference to the two principles set out below:





1. Where no appeal is granted by statute, the only recourse to challenge a decision by a person exercising a power under the statute is by way of judicial review in the Courts. As the Sisters argue, there is no provision in s. 89 of the Act for a hearing where the Superintendent refuses to make an Order under s. 87, contrasted with s. 89(3) which specifically gives the right to a hearing where the Superintendent refuses to make an Order under s. 33 of the Act.
2. An unincorporated association, such as a trade union, is not a legal person and consequently does not have rights under a statute that a person does, including the right to appeal, unless the statute expressly provides to the contrary. In this matter, the Sisters argue that s. 89 of the Act provides that a person on whom a notice is served may require a hearing, and the Act does not extend the meaning of “person” to include an unincorporated association, such as CUPE.

The Superintendent also argues that the combined effects of s. 89(2)(e) and s. 89(6) of the Act confer an express right to a s. 89 hearing only where the Superintendent proposes to make an order under s. 87. In this case, the Superintendent declined to make an order that the Pension Plan was a MEPP. The Superintendent states that if, as in Entitlement 55 v. Imperial Oil Limited (1955), PCO Bulletin, Vol. 6, Issue 2, page 53 (“Imperial Oil”), the Commission finds that it has inferential jurisdiction to conduct a s. 89 hearing where the request is of substance, then the request for a MEPP determination must be one of substance. The Superintendent takes the position that CUPE has not raised the issue at hand for any substantive reason under s. 81 of the Act.

### *The Relevant Legislation*

8. – (1) A pension plan is not eligible for registration unless it is administered by an administrator who is,
  - (e) if the pension plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan of whom at least one-half are representatives of members of the multi-employer pension plan, and a majority of such representatives of the members shall be Canadian citizens or landed immigrants;
87. – (1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 89 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund.
  - (2) The Superintendent may make an order under this section if the Superintendent is of the opinion, upon reasonable and probable grounds,
    - (a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;



- (b) that the pension plan does not comply with this Act and the regulations; or
- (c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.

89. – (1) Where the Superintendent proposes to refuse to register a pension plan or an amendment to a pension plan or to revoke a registration, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant or administrator of the plan.

(2) *Where the Superintendent proposes to make an order under,*

- (a) subsection 42 (9) (repayment of money transferred out of pension fund);
- (b) subsection 43 (5) (repayment of money paid to purchase pension, deferred pension or ancillary benefit);
- (c) subsection 80 (6) (transfer of assets to pension fund of successor employer);
- (d) subsection 81 (6) (transfer of assets to new pension fund); or
- (e) *section 87 (administration of pension plan in contravention of Act or regulation),*

the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and on any other person to whom the Superintendent proposes to direct the order. (italics added)

- (3) Where the Superintendent proposes to make or to refuse to make an order requiring an administrator to accept an employee as a member of a class of employees for whom a pension plan is established or maintained, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator, and the Superintendent shall serve or require the administrator to serve a copy of the notice and the written reasons on the employee.

...

- (6) A notice under subsection (1), (2), (3), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Commission if the person delivers to the Commission, within thirty days after service of the notice under that subsection, notice in writing requiring a hearing, and the person may so require such a hearing.

94. – (4) The Superintendent shall exercise the powers and perform the duties that are vested in or imposed upon the Superintendent by this Act, the regulations and the Commission.

96. – It is the duty of the Commission,

- (a) to administer this Act and the regulations;

The respondents argue that s. 89 of the Act provides no right to a hearing by the Commission where the Superintendent refuses to make an order under s. 87.



While the Commission recognizes that it is not bound by past decisions, the Commission has previously taken the position set out in C.U.P.E. v. O.H.A. (1990) PCO Bulletin, Vol. 1, Issue 4, affm'd (1992) 91 D.L.R. (4th) 436 (Ont. Div. Ct.) ("CUPE v. OHA"), that s. 89(2) can be read so that the phrase "proposes to make an order" includes a proposal to refuse to make an order, for the reasons set out in that decision and affirmed by the Divisional Court. This position was further confirmed by the Commission in its decision in Imperial Oil.

Before dealing with the specific issues and arguments of the matter at hand, it is appropriate to make reference to certain statements included in the Imperial Oil decision, regarding the Act and the Commission's role:

Section 96 of the Act places ultimate responsibility with the Commission to administer the Act and regulations. The Superintendent is appointed by the Commission and is obliged to "exercise the powers and perform the duties that are vested in or imposed on the Superintendent by this Act, the regulations and the Commission". (subs. 94 (4)).

The courts considered the role of the Commission in Collins v. Pension Commission of Ontario (1986), 56 O.R. (2d) 275 (Divisional Court). While the case was about surplus withdrawal under pre-reform legislation, there is little doubt that its comments were intended to be of general application. The flavour of the court's exhortations, we believe, should be kept in mind when considering the legislation. The Commission was called a fiduciary and, at p. 286 of the case, it was said "It is difficult to imagine why the commission was established without accepting that its principal function was to protect the interests of plan members."

Those are the contextual considerations which we brought to bear in considering whether the Commission had jurisdiction in this matter. However, we are mindful of the legal principle that the Commission is a creature of statute with only the powers bestowed upon it by the legislature.

### *Reasoning and Result*

The heart of the issues raised by CUPE is whether or not the Pension Plan was in fact a MEPP within the meaning of s. 8(1)(e) of the Act prior to January 1, 1995, and it is on the determination of this question that the Commission has been asked to take jurisdiction.

As stated in Imperial Oil, the Commission recognizes that it is not bound by past decisions. On the other hand, we continue to find the reasoning in CUPE v. OHA, in Imperial Oil, and in the Courts' review of those decisions, to be sound and we adopt it here.

Is the request for a hearing without substance, as argued by the Superintendent? In our view, CUPE's request that the Commission hold a hearing to determine whether or not the Pension Plan is a MEPP could have significant implications for members of the Pension Plan and goes to the very heart of the matter of pension plan administration. The request is one of substance, and we concur with the Applicant's position that a determination of whether or not the Pension Plan is a MEPP can be made only after having heard the arguments on the merits.



We do not agree with the argument put forward by the Sisters that CUPE is not a person and consequently not entitled to a hearing under the Act. We note that s. 8(1)(e) of the Act, which describes the administrator for a MEPP, makes reference to collective agreement and representatives of members of the MEPP, and that CUPE is a recognized bargaining agent representing members of the Pension Plan subject to the terms of collective agreements. In addition, as argued by the Applicant, "it has been the demonstrated practice and policy of the Commission, the Divisional Court, as well as the Court of Appeal, to recognize the status of trade unions and afford them standing in connection with hearings before the Commission." Therefore, we conclude that CUPE should be considered a "person" for purposes of standing before the Commission.

### *Conclusion*

For these reasons, the hearing panel finds that the Commission has jurisdiction to hold a hearing into whether or not the Pension Plan constitutes a MEPP within the meaning of s. 8(1)(e) of the Act.

Dated this 13th day of May, 1998 at the City of Toronto, Province of Ontario.

C.S. (Kit) Moore, Chair  
M. Elizabeth Greville, Member  
David E. Wires, Member





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## Commission Decision with Reasons for XDEC-38

INDEX NO.	XDEC-38
PLAN	Pension Plan for Salaried Employees of McDonnell Douglas No. 520593
DATE OF DECISION	May 25, 1998
PUBLISHED	Telix - May 27, 1998

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In the Matter of the Pension Benefits Act, R.S.O.  
1990, c.P8 (the "Act");

and in the Matter of the refusal of the Superintendent  
of Pensions to make an Order requiring the partial  
wind up of the Pension Plan for Salaried Employees  
of McDonnell Douglas Canada Ltd., Registration  
No. 520593 (the "Plan");

and in the Matter of a Hearing in Accordance with  
subsection 89(8) of the Act.

### Between

GARY MAYNARD

Applicant

- and -

SUPERINTENDENT OF PENSIONS

Respondent

- and -

MCDONNELL DOUGLAS CANADA LTD.

Respondent

### Reasons for the Decision

(Hearing on jurisdictional issues - March 27, 1998  
and supplementary written materials filed on or before  
April 6, 1998)

### Before

Kathryn M. Bush, Panel Chair  
C.S. (Kit) Moore, Member  
Donald Collins, Member

### Appearances

For the Applicant

Mr. Murray Gold

Mr. Roberto Tomassini

For the Superintendent of Pensions

Ms. Deborah McPhail

For the respondent

Mr. Mark Freiman

Mr. Greg Winfield

### Hearing Date

March 27, 1998

### Decision Released

May 25, 1998



## Reasons for Decision

### *Facts*

The Respondent, McDonnell Douglas Canada Ltd. ("MDCAN") carries on the business of manufacturing aircraft wings for supply to its parent corporation. This business is carried out at a single location in Mississauga, Ontario.

The Superintendent of Pensions (the "Superintendent") and the staff of the Pension Commission of Ontario undertook an investigation of the Plan in respect of the period from January 1, 1990 through December 31, 1994 to determine if a partial wind up of the Plan should be ordered.

After the conclusion of this investigation and consideration of these matters, the Superintendent declined to make the Order requested. In responding to the Applicant's inquiry regarding a possible partial wind up, the Superintendent stated:

"... PCO staff have recently completed a review of the circumstances surrounding the termination of employees at McDonnell Douglas Canada Ltd. during the period of 1990 to 1994. I have fully and carefully considered the facts and issues from that review. After such consideration, I am unable to conclude that there are grounds to order a partial wind up of the Plan under subsection 69(1) of the Pension Benefits Act during that time period and I do not intend to make such an order..."

The Applicant, a member of the Plan, by filing a Request for Hearing under Section 89 of the Act dated January 22, 1997 has requested a hearing in connection with the Superintendent's refusal to make the above-noted Order.

### *Issue*

MDCAN has raised as a preliminary matter that there is no jurisdiction in the Pension Commission of Ontario ("Commission") to hear this matter as there is no ground under Section 89 of the Act for this hearing.

In determining whether the Commission has jurisdiction under Section 89 of the Act to hear the Applicant's request the relevant case law was considered.

The case of The Canadian Union of Public Employees et al. v. The Ontario Nurses Association et al. involved a request by the applicant unions for a hearing under section 89 of the Act in circumstances where the Superintendent of Pensions had declined to issue an order requiring that an administrator be appointed in accordance with subsection 8(1)(e) of the Act. The respondents advanced the argument that the Commission had no jurisdiction to hear such a request because the combined effect of subsections 89(2)(e) and 89(6) meant that a hearing was available only in circumstances where the Superintendent proposed to make an order under section 87 of the Act, and not where the Superintendent declined to make such a proposal.

The Canadian Union of Public Employees et al. v. The Ontario Nurses Association et al., November 22, 1990, *PCO Bulletin* 1/4, pp. 12-16

The Commission ruled as follows in that case:

"First, the legislature would have intended fair play for both sides and, where possible, the Act should be construed to provide fair and equitable treatment for all concerned. It would take very clear language indeed to persuade the Commission that inequitable treatment of the sort envisaged by the OHA [Ontario Hospital Association] and the Superintendent was intended.

Second, the general scheme of the Act is that initial jurisdiction lies in the Superintendent with



rights of appeal or a hearing to the Commission. The supervisory power and obligation in the Commission over the Superintendent is apparent from a reading of subsection 95(2) [now 94(2)], wherein the Superintendent is appointed by the Commission, and subsection 95(4) [now 94(4)] under the terms of which the Superintendent is obliged to perform the duties vested in or imposed upon him by “this Act, the Regulations, and the Commission”. Where possible, clause 90(2)(e) [now 89(2)(e)] must be given an interpretation which enables the Commission to fulfill its supervisory obligations pursuant to subsection 95(4) [now 94(4)] and its overall duty “to administer this Act and the regulations” pursuant to subsection 97(1) [now 96(1)].

It may be that the practical necessity of reviewing the Superintendent’s decision creates certain powers in the Commission by necessary implication from the nature of the regulatory authority contained in subsection 97(1) [now 96(1)] but we leave that argument for another day.

Third, the Act is remedial in nature with one of its basic objectives to protect and enhance the rights of plan members. Section 10 of the Interpretation Act dictates a similar approach to construction...

Fourth, the Act creates, in section 90 [now 89], a process called a “hearing” which is not circumscribed by the rigid rules which apply to appeals. For example, a right of appeal cannot be implied as it must be expressly set out in legislation. The hearing as something procedurally distinct from an appeal, is not circumscribed by such a rule...

Returning to the key issue we ask again: can clause 90(2)(e) [now 89(2)(e)] be read so that the phrase “proposes to make an order” includes a proposal to refuse to make an order? We are of the

view that it can be. The fact that the Superintendent issued his decision in letter form thereby failing to comply with the formalities of subsection 90(2) [now 89(2)] does not make the decision any less a proposal to make an order (Firestone Canada Inc. v. Pension Commission of Ontario (1988)(CCH Canadian Employment Benefits and Pension Guides Report, paragraph 8070).

An order expressing the negative may still be in order in the sense contemplated by section 90(2) [now 89(2)] of the Act...

### CONCLUSION

A refusal by the Superintendent to make an Order pursuant to subsection 88(1) [now 87] amounts to an order, within the meaning of clause 90(2)(e) [now 89(2)(e)], thereby triggering the right of the Unions and the ONA to hearing before the Commission pursuant to subsection 90(6) [now 89(6)] of the Act.”

On appeal, the Divisional Court found that the Commission’s decision on this point in this case was reasonable and should be upheld. The court stated:

“It is not reasonable, in our opinion, to think that a decision to refuse to issue an order requested under s. 88 [now 87] should be treated any differently, for the purposes of s. 90(6) [now 89(6)], than one to make such an order. In the first case, those interested and in disagreement with the decision would have to live with it, while in the second, they would have access to the Commission by way of an appeal and the power it possesses under s. 90(9) [now 89(9)].

Re Canadian Union of Public Employees et al. and Ontario Hospital Association; Superintendent of Pensions, Intervenant (1992), 91 D.L.R. (4th) 436 (Div. Ct.), at p. 441



The Commission followed the above reasoning in the Imperial Oil Limited Retirement Plan (1988) et al., April 28, 1995, *PCO Bulletin* 6/2, at pp. 52-53 of the case. That case involved a request by a group of members for a section 89 hearing in circumstances where the Superintendent had registered an amendment that the group of members alleged was void or adverse under the Act. The Commission found:

“While the sections of the Act challenged by plan members are different here than in CUPE v. OHA, it is essentially on all fours. In the case before us, plan members have objected to adverse plan amendments and the Superintendent has refused to issue a section 87 order...

In short, we reject the “complete code” argument and the contention that the Superintendent did not have the power to issue a section 87 order...

Thus, we do not accept that the Entitlement 55 Group asked for a section 87 order simply as a means of obtaining a hearing before the Commission. That is, a mere request for a section 87 order and consequent refusal by the Superintendent is not enough to entitle anyone to a hearing before the Commission. There must be substance to the section 87 request, as there was in this case.”

The jurisprudence suggests that, at least, in the circumstances considered to date, an order expressed in the negative, or a refusal to issue an order, gives rise to the same procedural rights that would flow from an order. The question to be determined in this matter was whether there is any difference in principle between the statutory wording of subsection 89(2)(e), which provides that where the Superintendent “proposes to make an order under section 87 (administration of pension plan in contravention of Act or regulation), the Superintendent shall serve notice of the proposal”, and the statutory wording of subsection 89(5), which provides:

“89(5) Where the Superintendent proposes to make an order requiring the wind up of a pension plan or declaring a pension plan wound up, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and the employer, and the Superintendent may require the administrator to transmit a copy of the notice and the written reasons on such other persons or classes of persons or both as the Superintendent specifies in the notice to the administrator.”

The statutory right to a hearing which flows from both subsections 89(2)(e) and 89(5) is found in subsection 89(6), which provides that a notice under subsections 89(1), (2), (3), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Commission if the person delivers certain material to the Commission within 30 days.

The Commission made the following statement in the Stelco Inc. and The Superintendent of Pensions (1993), *PCO Bulletin* 4/1 p. 48 at 49:

“This statutory scheme clearly contemplates that the Superintendent will inquire into a possible wind up before the Commission holds a hearing into the matter. Indeed, if the Superintendent declines to make an order, there will be no hearing. In short, the Superintendent must inquire into the matter before it comes before the Commission.

...





In our view, this two-step procedure, whereby the Superintendent's inquiry precedes the hearing before the Commission, promotes the good administration of the Act and is fair to all affected parties. An employer or administrator ought not to be forced to undergo the time and expense of a hearing in respect of a proposed wind-up order unless the Superintendent has concluded that one or more of the circumstances set out in subsection 69(1) of the Act exist."

There is a question as to whether the Commission's comments in the Stelco decision were obiter and only collateral to the decision. We have considered those comments at least to be relevant to the procedure to be followed in the consideration of partial wind-up matters.

In considering the matter at hand the Commission noted that the Superintendent did not, in this case, appear to exercise any discretion available to him under Section 69 of the Act. Instead the Superintendent stated that there were not grounds upon which to order a partial wind-up.

Having found that this is not a case where the Superintendent exercised discretion we conclude that there is no need to consider whether the Commission has jurisdiction to review a refusal by the Superintendent to order a partial wind-up under Section 69 of the Act where the Superintendent exercises discretion.

### *Conclusion*

In this matter we must determine only whether the Commission has jurisdiction to review a refusal by the Superintendent to order a partial wind-up under Section 69 of the Act where the Superintendent has not exercised any discretion. It would appear that in such a case the principles set down in CUPE and Imperial Oil would be of direct application. We find no reason to depart from those principles. Accordingly, we find that the Commission has jurisdiction to hear this matter pursuant to Section 89 of the Act.

Given the comments of the Commission in the Stelco, *supra*, matter it would appear that the proper procedure is to conduct this hearing with the Applicant being permitted to call fresh or additional evidence in order to prove that the Superintendent's decision is incorrect in the factual sense. The Applicant bears the onus of proving that the Superintendent's decision is incorrect and the hearing will proceed on the presumption that the Superintendent's decision is correct. If the Applicant fails to meet this onus the Commission will dismiss the Applicant's request. If the Applicant establishes that the Superintendent's decision is incorrect then the matter must be returned to the Superintendent for reconsideration.

Dated this 25th Day of May, 1998 at the City of Toronto, Province of Ontario.

Kathryn M. Bush, Panel Chair  
C.S. (Kit) Moore, Member  
Donald Collins, Member



## Commission Decision with Reasons for XDEC-39

INDEX NO.	XDEC-39
PLAN	Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, (PN 302851)
DATE OF DECISION	May 29, 1998
PUBLISHED	Telix - June 4, 1998

In the Matter of the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "Act");

and in the Matter of the decision of the Superintendent of Pensions for Ontario dated January 13, 1997, with respect to the transfer of assets from the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the "Pension Plan") to the St. Joseph's Health Centre Pension Plan, the Providence Centre Pension Plan, and the Morrow Park Plan (the "New Plans");

and in the Matter of a hearing in accordance with subsection 89(8) of the Act.

### Between

THE CANADIAN UNION OF PUBLIC  
EMPLOYEES, LOCALS No. 1144 and 1590  
Applicant

-and-

SUPERINTENDENT OF PENSIONS,  
THE SISTERS OF ST. JOSEPH FOR THE  
DIOCESE OF TORONTO IN UPPER CANADA,  
ST. MICHAEL'S HOSPITAL, ST. JOSEPH'S  
HEALTH CENTRE and PROVIDENCE CENTRE  
Respondents

### Before

C.S. (Kit) Moore, Chair  
M. Elizabeth Greville, Member  
David E. Wires, Member

### Appearance

For the applicant:

Mr. M. Zigler  
Mr. R. Tomassini

For the Superintendent of Pensions:

Ms. D. McPhail  
Ms. L. McDonald

For the respondents:

Mr. M. Freiman  
Mr. G. Winfield  
Mr. J. Buhlman  
Ms. F. Kristjanson  
Mr. J. Leon  
Ms. A. Finn

### Hearing Date

January 27, 1998  
Toronto, Ontario

### Decision Released

May 29, 1998  
Toronto, Ontario



## Reasons for Decision

### *Nature of the Application*

The Superintendent of Pensions for Ontario (the "Superintendent") refused to grant relief requested by the Canadian Union of Public Employees Locals No. 1144 and 1590 ("CUPE"), including a request by CUPE that the Superintendent issue an order under s. 87(1) of the Act that the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the "Pension Plan") and its successors constitute a multi-employer pension plan (a "MEPP"). In a letter written to the Superintendent and other interested parties, CUPE indicated its intention to appeal certain decisions of the Superintendent. Subsequently, a Request for Hearing under s. 89 of the Act was submitted to the Pension Commission of Ontario (the "Commission").

Following an initial pre-hearing conference and telephone conference call among the parties, a further pre-hearing conference was held at which a preliminary question arose as to whether the Commission had jurisdiction to conduct the hearing. The parties agreed to argue the issue of jurisdiction in advance of the merits. The Commission received written submissions on the matter, heard oral argument and advised the parties, by way of letter dated March 13, 1998, that it had determined that the Commission had jurisdiction to determine whether the pension plan is a MEPP under the Act. Written reasons were published in an amended decision released May 13, 1998 (the "May 13th Decision"). Where appropriate, reference is made to that decision in describing the background and reasoning for our subsequent decisions regarding the Commission's jurisdiction in these matters.

At the hearing on jurisdiction, the hearing panel was also asked to determine its jurisdiction in respect of four other issues relating to division of the Pension Plan, transfer of assets, section 80 and section 81 of the Act. Details of these requests are set out below.

### *The Facts*

Reference should be made to the May 13th Decision for certain facts set out in that decision. Those facts were included in the Agreed Statement of Facts and Jurisdictional Issues submitted to the hearing panel with the consent of all the parties to the hearing.

### *The Issues*

The preliminary jurisdictional issues remaining to be determined are as follows:

- Issue #1** Does the Pension Commission of Ontario have jurisdiction to hold a hearing, pursuant to s. 89 of the Act, arising from the division of the Pension Plan into three plans in the circumstances of this case?
- Issue #2** Does the Pension Commission of Ontario have jurisdiction to hold a hearing, pursuant to s. 89 of the Act, as a result of the approval of the Superintendent of the transfer of assets from the Pension Plan to two other plans, in the circumstances of this case?
- Issue #3** Does the Pension Commission of Ontario have jurisdiction to hold a hearing, pursuant to s. 89 of the Act, arising from an issue under s. 80 of the Act in the circumstances of this case?
- Issue #4** Does the Pension Commission of Ontario have jurisdiction to hold a hearing, pursuant to s. 89 of the Act, arising from an issue under s. 81 of the Act in the circumstances of this case?



### *The Arguments*

Regarding Issue #1 (division of Pension Plan), the Superintendent and other respondents argue that the Act does not confer jurisdiction upon the Superintendent in the first instance to consent or to refuse to consent to the splitting of a pension plan, with the result that the Commission has no jurisdiction to consider this issue under s. 89 of the Act.

Regarding Issues #2 (transfer of assets) and #4 (section 81), the Superintendent and other respondents argue that there is no provision in s. 89 of the Act for a hearing where the Superintendent refuses to make an order under s. 81(6) requiring return of transferred assets. The other respondents also argue that there is no suggestion that the Act has not been complied with regarding transfer of assets, and that in any event there is no jurisdiction for the Commission to revoke a transfer of assets to which the Superintendent has already consented. The Superintendent also argued that if, as in Entitlement 55 v. Imperial Oil Limited (1955), PCO Bulletin, Vol. 6, Issue 2, page 53 ("Imperial Oil"), the Commission finds that it has inferential jurisdiction to conduct a s. 89 hearing where the request is of substance, then the request for an order returning transferred assets must be one of substance under s. 87(2) and s. 81(5). The Superintendent takes the position that CUPE has not made any allegation of substance in this regard.

CUPE argues that if the Pension Plan is determined to be a MEPP, then the Pension Plan has not been administered properly, and the Commission would have jurisdiction to hold a hearing into Issues #1, #2 or #4, where the Superintendent refuses to make orders under s. 87 of the Act. CUPE argues that its request for s. 87 orders are ones of substance, including principally that s. 81(e) of the Act has been breached. CUPE also argues that a substance test would be premature prior to the holding of the hearing itself.

Regarding Issue #3 (section 80), the Superintendent argues that he has made no determination under s. 80 of the Act, with the result that the Commission has no jurisdiction to hold a s. 89 hearing until the Superintendent has looked into the matter. CUPE states that it "makes no request for a hearing pursuant to s. 80 of the Act, since it is irrelevant."

In addition, the Sisters and other respondents argue that s. 89 of the Act provides that a person on whom a notice is served may require a hearing, and the Act does not extend the meaning of "person" to include an unincorporated association, such as CUPE.

### *The Relevant Legislation*

In addition to the legislation reproduced in the May 13th Decision, the following excerpts from the Act are also noted.

#### **Section 80 (successor employer)...**

- 80. – (5) The Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the employer's pension plan or that does not meet the prescribed requirements and qualifications.
- 80. –(6) The Superintendent by order may require the transferee to return to the pension fund, with interest, assets transferred without the prior consent required by subsection (4). 1987, c. 35, s. 81(1-6).





## Section 81 (successor pension plan)...

81. – (4) No transfer of assets shall be made from the pension fund of the original pension plan to the pension fund of the new pension plan without the prior consent of the Superintendent or contrary to the prescribed terms and conditions.
81. – (5) The Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the original pension plan or that does not meet the prescribed requirements and qualifications.

### *Reasoning and Result*

Regarding the argument that s. 89 of the Act provides no right to a hearing by the Commission where the Superintendent refuses to make an order under s. 87 or s. 81, the Commission has previously taken the position set out in C.U.P.E. v. O.H.A. (1990) PCO Bulletin, Vol. 1, Issue 4, affirm'd (1992) 91 D.L.R. (4th) 436 (Ont. Div. Ct) (“CUPE v. OHA”), that s. 89(2) can be read so that the phrase “proposes to make an order” includes a proposal to refuse to make an order, for the reasons set out in that decision and affirmed by the Divisional Court. This position was further confirmed by the Commission in its decision in Imperial Oil and in the May 13th Decision.

Regarding the argument put forward by the Sisters and other respondents that CUPE is not a person and consequently not entitled to a hearing under the Act, we confirm the position, taken by the Commission in its May 13th Decision, that CUPE should be considered a “person” for purposes of standing before the Commission.

Regarding Issue #3 (section 80), we note that the Superintendent has made no determination of a s. 80 issue, nor has the Superintendent been requested to do so. Until such a request is made, and until the Superintendent inquires into the matter, the hearing panel declines to take jurisdiction regarding this issue.

For Issues #1 (division of Pension Plan), #2 (transfer of assets) and #4 (section 81), the hearing panel agrees that CUPE has standing before the Commission. The panel also agrees that Imperial Oil could be used to give the Commission jurisdiction to hold a s. 89 hearing for one or more of these three issues, provided that the request for such a hearing is indeed one of substance under the criteria specified in s. 87(2), which are:

87. – (2) The Superintendent may make an order under this section if the Superintendent is of the opinion, upon reasonable and probable grounds,
- (a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;
  - (b) that the pension plan does not comply with this Act and the regulations; or
  - (c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.

The Commission has yet to make a determination that the Pension Plan is or is not a MEPP. Such determination can be made only after hearing the merits. In the view of the present hearing panel, if the Commission determines that the Pension Plan is a MEPP, then the Applicant’s request may have substance and the Commission will be in a position to take jurisdiction regarding Issues #1, #2 and #4.



On the other hand, if after hearing the merits the Commission determines that the Pension Plan is not a MEPP, then the Applicant's request may be seen to lack substance, with the result that the Commission may not take jurisdiction on these issues. In the panel's view, the MEPP determination must first be made before the Commission decides whether or not to take jurisdiction on any one of these three issues.

### *Conclusion*

On the basis of the arguments made at the hearing on jurisdiction, the panel agrees that the Superintendent has made no determination under s. 80 of the Act, and in fact has not been requested to do so. Accordingly, the panel finds that for Issue #3 (section 80), the Commission does not now have jurisdiction to hold a hearing under s. 89 of the Act in the circumstances of this case.

For Issues #1 (division of Pension Plan), #2 (transfer of assets) and #4 (section 81), the panel determines that these issues could be substantive ones if the Pension Plan is determined to be a MEPP. If, after having held a hearing into the MEPP issue, the Commission determines that the Pension Plan is a MEPP, the panel concludes that CUPE will then have a right to a hearing under s. 89 of the Act regarding issues of division of the Pension Plan, transfer of assets and section 81 of the Act. If the Commission determines

that the Pension Plan is not a MEPP, the panel's view is that these three issues would be without substance, with the result that CUPE would have no right to a hearing under s. 89 of the Act regarding these issues. As no MEPP determination has yet been made by the Commission, we find that the Commission does not have jurisdiction now to hold a hearing under s. 89 of the Act regarding Issues #1, #2 or #4.

Dated this 29th day of May, 1998 at the City of Toronto, Province of Ontario.

C.S. (Kit) Moore, Chair  
M. Elizabeth Greville, Member  
David E. Wires, Member



## Commission Decision with Reasons for XDEC-40

INDEX NO.	XDEC-40
PLAN	Non-Contributory Pension Plan for Represented Employees at Parts Distribution Centres - Chrysler Canada Ltd., Ontario Registration Number 00337808
DATE OF DECISION	August 19, 1998
PUBLISHED	Telix & FSCO Internet Site

In the Matter of the Pension Benefits Act, R.S.O. 1990, c.P.8 (the "Act");

and in the Matter of a complaint by Mr. Stanley Dwyer relating to the Non-Contributory Pension Plan for Represented Employees at Parts Distribution Centres - Chrysler Canada Ltd., Ontario Registration Number 0337808 (the "Plan").

Between

STANLEY DWYER  
Applicant

- and -

CHRYSLER CANADA LTD.

- and -

CAW CANADA and CAW, LOCAL 1285

- and -

SUPERINTENDENT OF PENSIONS  
Respondents

Before

Kathryn M. Bush, Chair  
Donald Collins, Member  
Joyce Stephenson, Member

Appearances

For the applicant:

Mr. Stanley Dwyer

For Chrysler Canada Ltd.:

Mr. Paul K. Carswell

For CAW Canada and CAW, Local 1285:

Ms. Celia Harte

For the Superintendent of Pensions:

Mr. L. Glenn Frelick

Ms. L. MacDonald

Hearing Date

May 20, 1998

Decision Released

August 19, 1998



## Reasons for Decision

### *Nature of the Application*

1. Mr. Stanley Dwyer (the "Applicant") requested a hearing before the Pension Commission of Ontario (the "Commission") relating to the Non-Contributory Pension Plan for Represented Employees at Parts Distribution Centres - Chrysler Canada Ltd., Ontario Registration Number 0337808 (the "Plan").
2. The Applicant has requested that the Commission make a declaration that he is entitled to either a deferred pension or a lump sum payment under the provisions of the Plan.
3. A pre-hearing conference was held on January 29, 1998, at which time the Commission decided that a panel of the Commission will hold a hearing on certain preliminary issues (the "Hearing on Preliminary Issues") before proceeding to a hearing on the merits (the "Hearing on the Merits").
4. The parties identified the following preliminary issues to be decided at the Hearing on Preliminary Issues:
  - (1) Does the Commission have jurisdiction to hear the Applicant's claim if the Superintendent of Pensions (the "Superintendent") has not made a ruling?
  - (2) Does the Applicant's hearing request raise an arguable issue of substance which falls within the jurisdiction of the Commission?
  - (3) Does the Applicant's claim raise a *prima facie* case for relief?

### *Issues*

1. Does the Commission have jurisdiction to hear the Applicant's claim if the Superintendent has not made a ruling?

With respect to the first preliminary issue the Superintendent has argued that the Applicant has not requested that the Superintendent review his complaint. The Superintendent then argued that if a matter has not been placed before the Superintendent for a determination, "the matter is not properly before the Commission under Section 89" of the Act (See *Molson Breweries Pension Plan*, PCO Bulletin / Vol. 6, Issue 5, at p. 40, and *Stelco Inc.*, PCO Bulletin / Vol. 4, Issue 1, at p. 49.).

We agree with the authorities cited by the Superintendent. We are however, concerned that in this case the Applicant received two letters from the Pension Officer responsible for the Plan apparently making a determination of Mr. Dwyer's pension entitlement. Excerpts from those letters are as follows:

- i) September 29, 1995

"Based on our review of the documentation submitted by you and Mr. Carswell, it is the opinion of the staff of the Commission that the company is not in contravention of the provisions of the Plan or the requirements of the Pension Benefits Act."

- ii) February 18, 1997

"Chrysler determined that Mr. Dwyer had 84 months or 7 years of Credited Service when he lost his seniority on July 9, 1976. Ten years of Credited Service is required under 5.1(A) of Article VI of the Plan to obtain entitlement to a deferred vested pension. Mr. Dwyer fails to meet this pre-requisite condition and thus is not entitled to a deferred pension from the Plan".





The same Pension Officer later provided Mr. Dwyer with instructions on how to request a hearing before the Commission.

Further, the then Chair of the Pension Commission of Ontario wrote to Mr. Dwyer citing the Pension Officer's determination and indicating that given that determination she could not provide any assistance.

Without disagreeing with the propositions set forth in Molson Breweries and Stelco, supra, it would seem reasonable for the Applicant to believe that the Superintendent had considered this matter and there had been more than six months between the Applicant's request for a hearing and the hearing on preliminary issues so that it would appear that the Superintendent had sufficient time to consider this issue if desired. Accordingly, we do not believe that this preliminary issue should impede the consideration of this matter.

2. **Does the Applicant's hearing request raise an arguable issue of substance which falls within the jurisdiction of the Commission?**
3. **Does the Applicant's claim raise a *prima facie* case for relief?**

We will proceed to consider the remaining two preliminary issues together. Does the Applicant's hearing request raise an arguable issue of substance which falls within the jurisdiction of the Commission and does the Applicant's claim raise a *prima facie* case for relief?

To determine these preliminary issues it is necessary to outline the relevant factual background:

1. The Applicant was hired by Chrysler Canada Ltd. ("Chrysler") on September 16, 1968.
2. The Applicant's employment with Chrysler was terminated on July 9, 1976, when he had accrued 84 months (7.0) years of Credited Service under the Plan.
3. The Applicant's termination of employment on July 9, 1976 was upheld by Arbitrator J.D. O'Shea, Q.C. by decision dated October 23, 1978 (U.A.W. and U.A.W. Local 1285 and Chrysler Canada Limited (October 23, 1978)).
4. An application for judicial review of the Arbitrator's decision was dismissed on March 13, 1980.
5. The Applicant's application for leave to appeal to the Ontario Court of Appeal the judicial review request was denied.
6. Section 3(f) of Article IX of the Plan permits an employee who has seniority with Chrysler to continue to accrue Credited Service while in receipt of Worker's Compensation Benefits.

"If an Employee is absent from his plant

...

- (ii) owing to an injury for which he is in receipt of Workmen's Compensation Benefits,

He may count such time at the rate of 40 hours for each complete calendar week of such absence as though the Employee had received pay for working such hours. "(Emphasis Added)"



7. The Plan defines an "Employee" as follows:

"Employee" shall mean an employee of the Corporation who is covered by the Collective Bargaining Agreement and who is on the Active Payroll or has seniority with the Corporation.

8. Both Chrysler and the CAW contend that pursuant to Section 23(c) of the Collective Bargaining Agreement in effect at the date of the Applicant's termination of employment that the Applicant's seniority ceased at his termination of employment

Section 23 reads as follows:

Seniority shall cease for any one of the following reasons:

...

"(c) If the employee is absent for five (5) regular working days without advising his supervisor giving satisfactory reasons;"...

9. The Applicant contends that he was entitled to additional Credited Service for the period of time that he was in receipt of Worker's Compensation benefits.

This Commission does not have jurisdiction to review the decisions under the *Labour Relations Act* (Ontario) which found that the Applicant's employment was properly terminated on July 9, 1976.

S. 1(A) of Article VI of the Plan requires that an employee must have ten or more years of Credited Service "at the date his seniority ceases" to be entitled to a deferred pension. As noted above, the Divisional Court and arbitrators all held that Mr. Dwyer's seniority had ceased on July 9, 1976. It is clear, therefore, that no time after July 9, 1976 should have been included in the calculation of Mr. Dwyer's Credited Service.

In considering this matter, we have taken into account the following passage from page 11 of the arbitration award of October 23, 1978:

"... The Company did not take the grievor's seniority away. The grievor's seniority ceased to exist because of the contractual provisions of Section 23. His seniority automatically ceased because of his failure to report his absence for 5 regular working days giving satisfactory reasons. The Employer has no right under the Collective Agreement to unilaterally reinstate the grievor's seniority once it is lost, since to do so could adversely affect the rights of other employees in the event of conflicting seniority rights, such as in a job posting."

Pursuant to the above, Chrysler cannot be said to have used an act of dismissal to terminate its obligations under the Plan toward the Applicant. The Applicant's loss of seniority and, accordingly, "employee" status under the Plan, occurred automatically when the Applicant did not report his absence from work in compliance with s.23 of the collective agreement.

### *Conclusion*

We find that the Applicant failed to meet the vesting requirements under the Plan and therefore does not have a right to a deferred vested pension. Accordingly, the Applicant has not raised an arguable issue of substance nor a *prima facie* case for relief and his application is therefore dismissed.

Dated this 19th day of August, 1998 at the City of Toronto, Province of Ontario

Kathryn M. Bush, Chair  
Donald Collins, Member  
Joyce Stephenson, Member

PLACE  
STAMP  
HERE

The Editor, *Pension Bulletin*  
Financial Services Commission of Ontario  
5160 Yonge Street, 17th Floor  
Box 85  
North York, Ontario  
M2N 6L9

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# THE FINANCIAL SERVICES COMMISSION OF ONTARIO

# PENSION BULLETIN

APRIL, 1999

VOLUME 8, ISSUE 1

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## General Announcements

### Acting Chair and Vice-Chair

Eileen Gillese resigned from her position as Chair of the Financial Services Commission of Ontario (FSCO) and Chair of the Financial Services Tribunal, on January 11, 1999, when she was appointed as a judge to the Ontario Court (General Division). Martha Milczynski has assumed the position of Acting Chair, and Kathryn Bush is Acting Vice-Chair. Colin McNairn continues in his position as Vice-Chair.

### Pension Staff

As part of FSCO's commitment to build expertise in the pension area, there have been a number of changes and/or additions in both the Pension Policy Unit of the Policy and Communications Branch, and in the Pension Plans Branch.

In the Pension Policy Unit, Roger Smithies is now senior manager, Jerry Williams is senior policy consultant, Mathew Ou is senior policy analyst and James De Monte is policy analyst.

In the Pension Plans Branch, Dave Gordon has been appointed acting director.

### Year 2000

As the regulator of financial services in Ontario, FSCO has taken steps to ensure its stakeholders are kept up-to-date on issues of Year 2000 compliance, so that responsibilities to consumers can be met. FSCO will continue to keep our stakeholders informed of further developments.

In June 1998 the Superintendent of Financial Services sent a letter to all pension plan administrators, reminding them of their responsibility to ensure there are no interruptions in plan activities, and individuals are not disadvantaged as a result of Year 2000 computer problems. The letter also identified some pension administrative functions which might be affected by such a problem and attached a bibliography of Year 2000 resources.

To get a better idea of the state of Year 2000 readiness in the pension sector, FSCO is currently in the process of conducting a survey. In January 1999, an anonymous questionnaire was sent to approximately 100 administrators of pension plans, chosen randomly by the number of plan members. In addition, the questionnaire was posted on the FSCO website ([www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca)) and administrators were invited to participate.

The questionnaires received to date indicate that most internal critical systems are Y2K ready now or will be by mid-1999. The majority of respondents are attempting to satisfy themselves that their third party servers will be ready but have said that they cannot ensure this. Most respondents have indicated they are aware of the legal implications and potential liabilities. Approximately half feel it necessary to develop contingency plans to deal with delays in their systems or in those of third party servers, and about half of the respondents have designated an individual to respond to inquiries from employees.

### FSCO Website - [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca)

As part of FSCO's ongoing effort to be a more cost-effective and efficient regulator, Tribunal decisions are sent to the affected parties only, by mail. These decisions, as well as FSCO publications and Board matters are posted on FSCO's website. Internet access is available free at most public libraries across Ontario. FSCO continues to mail its Insurance Bulletins and Pension Bulletins to stakeholders in these sectors.

### Advisory Committees

It has been an active time for the four FSCO Pension Advisory Committees - Accounting and Assurance (formerly Accounting and Auditing), Actuarial, Legal, and Investment. During the Fall of 1998 new appointments were made to fill vacancies on each Committee. In December 1998 Superintendent Dina Palozzi met with each committee to report on FSCO's activities and what is planned for the Committees in 1999.



For the first time, FSCO hosted an Advisory Committee Pension Forum on February 25, 1999. The Forum provided an opportunity for the four Committees to meet together with the Superintendent and senior staff, and discuss various pension issues which may be incorporated into FSCO's strategic priorities for the following year.

The Forum's structure gave all participants a chance to share their views. The Superintendent, the Director of the Policy and Communications Branch, and the Director of the Pension Plans Branch discussed FSCO's strategic priorities and policy and operational priorities. Group discussions followed, in which committee members broke into smaller groups composed of members of the four committees to discuss the issues raised and exchange ideas. Following this "cross fertilization", the Chairs of each Committee reported on the issues identified earlier.

FSCO staff have developed action plans to address the major issues identified in the forum. Working groups of members of the Advisory Committees and FSCO staff will implement the action plans.

The Superintendent and senior staff also held two meetings with the Pension Committee of the Ontario Federation of Labour to discuss pension issues that are of particular interest to organized labour as representatives of members of pension plans. Further meetings will be held during the year.

FSCO has received a number of responses from plan administrators and sponsors who volunteered to be included on a consultation roster. This group, which represents a broad cross-section of private industry, public sector plans, union plans and third-party administrators, will be called upon to participate in specific consultations on various issues.

The Superintendent recently met with the group and received advice on FSCO's draft Statement of Priorities 2000-2001, as well as operational issues affecting employers and administrators.

An updated list of members of the Advisory Committees follows:

***FSCO Pension Investment Advisory Committee***

Alfred G. Wirth, Chair  
Wirth Associates Inc.

Robert Bertram,  
Ontario Teachers' Pension Board

Jim Franks,  
Frank Russell Canada Ltd.

Bruce J. Grantier,  
Scotia Cassels

Elaine Hamilton,  
United Church of Canada

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Ann Marshall,  
James P. Marshall Inc.

Thomas E. Phelps,  
Noranda Inc.

Robert R. Rafos,  
Newcastle Capital Management Inc.

Marc L. Rouillard,  
Watson Wyatt

***FSCO Pension Actuarial Advisory Committee***

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Hewitt Associates LLC

Peter Beca,  
Aon Consulting Inc.

Art Bicknell,  
Sun Life Assurance Company of Canada

Sylvie Charest,  
William M. Mercer Limited

K. Paul Duxbury,  
The Segal Company Limited





Karen Figueiredo,  
Towers Perrin

Patrick F. Flanagan,  
Eckler Partners Limited

Karen G. Long, KPMG Actuarial,  
Benefits & Compensation Inc.

Kem Majid,  
Watson Wyatt

Jean-Claude Primeau,  
William M. Mercer Limited

Rob Rosenblat,  
Aon Consulting Inc.

Alnasir H. Samji,  
Towers Perrin

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Grant Thornton

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OMERS

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PricewaterhouseCoopers

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Institute of Chartered Accountants of Ontario

Bryan Kogut,  
BDO Dunwoody

Greg P. Shields,  
Canadian Institute of Chartered Accountants

Kenneth J. Vallillee,  
Arthur Andersen LLP

Karen A Yule,  
Ernst & Young

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William M. Mercer Limited

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Blake Cassels & Graydon

Peter K. Fritze,  
Tory Tory Deslauriers & Binnington

Murray Gold,  
Koskie & Minsky

Bernard A. Hanson,  
Cavalluzzo Hayes Shilton McIntyre & Cornish

Priscilla H. Healy,  
Towers Perrin

Rose Mark,  
State Street Trust Company Canada

Gary F. Nachshen,  
Stikeman, Elliott

Mary M. Picard,  
Fraser Milner

Clifton P. Prophet,  
Gowling, Strathy & Henderson

Douglas Rienzo,  
Osler, Hoskin & Harcourt

#### ***FSCO Advisory Council***

The Financial Services Commission of Ontario has formed an Advisory Council to provide advice and recommendations on matters such as its strategic priorities, fees and assessment structure, and FSCO's operations and broad industry issues. Input from this



external group will assist FSCO in fulfilling its mandate of enhancing public confidence in the financial services sectors it regulates. Members of the Advisory Council are participants in the insurance, pension, loan and trust, credit unions and caisses populaires, co-operatives and mortgage broker sectors, and include consumer representatives.

#### **FSCO Advisory Council Members**

Dina Palozzi, Chair  
Financial Services Commission of Ontario

Michael Carberry,  
Affiliate Insurance Management Inc.

John J. Carter,  
Pension Consultant

Jeff Contant,  
HB Group Insurance Management Ltd.

Tom Delaney,  
Tom Delaney Financial Group

Dennis Deters,  
The Co-operators Group

David Farrish,  
London Life

Jonathan Guss,  
Credit Union Central of Ontario

Florence Holden,  
Canadian Bar Association - Ontario (Pension Section)

Linda Matthews,  
Royal & Sun Alliance

Ross McClellan,  
Ontario Federation of Labour

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MCAP Mortgage Corporation

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Canadian Premier Life Insurance Company

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Home Savings & Loan Corporation

Pierre Tougas,  
La Fédération des Caisses Populaires de l'Ontario

Percy Vermeersch,  
The Investment Centre

Nick Villani,  
Aetna Canada

Donald Wallace,  
Canadian Association of Retired Persons

#### **Contacts for Pension Policy Enquiries**

All phone numbers are area code 416. FSCO's toll free telephone number is 1-800-668-0128.

##### **PENSION POLICY UNIT**

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Jerry Williams	Senior Policy Consultant	226-7771
Mathew Ou	Senior Policy Analyst	226-7772
James De Monte	Policy Analyst	226-7773



## Contacts for Plan Specific Enquiries

Allocations	Officer	Telephone
(DB) Agriculture/Mining/Construction plans	David Allan	226-7803
(DC) M plans		
(DB) Finance plans	Gino Marandola	226-7820
(DC) # and CAA-CHA plans		
(DB) Public Admin./Printing/Publishing plans	John Graham	226-7774
(DC) F plans		
(DB) Trade/Commercial plans	Stanley Chan	226-7806
(DC) T plans		
(DB) Rubber/Plastics	Gwen Gignac	226-7812
(DB) Transportation/Equipment/Electrical plans	Larry Martello	226-7821
(DC) W, X, Y and Z plans		
(DB) Food/Beverages plans	Irene Mook-Sang	226-7824
(DC) L and N plans		
(DB) Textiles/Paper plans	Jaen Pringi	226-7826
(DC) S plans		
(DB) Primary Metals/Machinery plans	Rosemin Jiwa-Jutha	226-7816
(DC) D and O plans		
(DB) Non-Metallic/Chemicals plans	Lynda Ellis	226-7809
(DC) G and I plans		
(DB) A-BRI plans	Rosemin Jiwa-Jutha	226-7816
(DC) J plans		
(DB) BRO-CONR plans	Carla Adams	226-7756
(DC) U plans		
(DB) Cons-DS plans	Irene Mook-Sang	226-7824
(DC) A plans		
(DB) DU-FZZ plans	Gwen Gignac	226-7812
(DC) P plans		
(DB) G-HAZ plans	Sharon Polischuk	226-7819
(DC) H plans		
(DB) HEA-KMZ plans	William Qualtrough	226-7827
(DC) CHB-CZZ		
(DB) KNA-MOQ plans	Larry Martello	226-7821
(DC) B plans		
(DB) MOR-PNZ plans	Gino Marandola	226-7820
(DC) K plans		
(DB) POL-SHE plans	Penny McIlraith	226-7822
(DC) R plans		
(DB) SHI-TORO plans	Stanley Chan	226-7806
(DC) E plans		
(DB) TORR - #s	John Graham	226-7774
(DC) Q&V		



## Legislative Changes/Regulatory Policies

ONTARIO REGULATION 307/98  
MADE UNDER THE PENSION BENEFITS ACT

MADE: JUNE 17, 1998, FILED: JUNE 19, 1998  
AMENDING REG. 909 OF R.R.O. 1990  
(GENERAL)

**NOTE:** Since January 1, 1997, Regulation 909 has been amended by Ontario Regulations 286/97 and 415/97.  
For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1996.

1. Section 2 of Regulation 909 of the Revised Regulations of Ontario, 1990 is revoked.
2. (1) Clause 4 (6) (b) of the Regulation is amended by striking out "the Superintendent and the Commission are" in the first line and substituting "the Superintendent is".  
(2) Subsection 4 (7) of the Regulation is amended by striking out "the Superintendent shall submit the report to the Commission" in the fourth and fifth lines and substituting "the actuary shall submit the report to the Superintendent".  
(3) Subsection 4 (8) of the Regulation is amended by striking out "and need not submit the report to the Commission" in the fifth line and substituting "and the actuary need not submit the report to the Superintendent".  
(4) Subsection 4 (9) of the Regulation is amended by striking out "Commission" in the second line and substituting "Superintendent".
3. Clause 6 (5) (d) of the Regulation is amended by striking out "Commission" in the first line and substituting "Superintendent".
4. (1) Subclause 8 (1) (b) (iii) of the Regulation is amended by striking out "Commission" in the third line and substituting "Superintendent".  
(2) Clause 8 (2) (b) of the Regulation is revoked and the following substituted:  
(b) notice of proposal to wind up the pension plan was given to the Superintendent of Pensions before December 18, 1991.
5. (1) Subsection 10 (1) of the Regulation is amended by striking out "Commission" in the second line and substituting "Superintendent".  
(2) Subsection 10 (11) of the Regulation is amended by striking out "Commission" in the third line and substituting "Superintendent".
6. Clause 10.1 (1) (b) of the Regulation is amended by striking out the portion before subclause (i) and substituting the following:  
(b) if the Superintendent is satisfied, on the basis of such information and evidence as he or she may require from the employer or administrator, that,
7. Section 12 of the Regulation is amended by striking out "Commission" in the third line and substituting "Superintendent".
8. (1) Subsections 8 (2) to (5) of the Regulation are revoked.  
(2) Section 18 of the Regulation is amended by adding the following subsection:  
(8.1) A certificate referred to in subsection (7) or (8) must be in a form approved by the Superintendent.
9. Subsection 19 (5.1) of the Regulation is amended by striking out "with the Superintendent" in the fifth line.





10. (1) Paragraph 5 of subsection 25 (1) of the Regulation is amended by striking out “Commission” in the second line and substituting “Superintendent”.  
(2) Paragraph 7 of subsection 25 (1) of this Regulation is amended by striking out “Commission” in the second line and substituting “Superintendent”.  
(3) Subsection 25 (2) of the Regulation is revoked and the following substituted:  
(2) The employer shall file a copy of the notice required by subsection 78 (2) of the Act before transmitting it to the persons required by that subsection.  
(4) Subsection 25 (4) of the Regulation is amended by striking out “Commission” in the second line and substituting “Superintendent”.
11. Section 27 of the Regulation is revoked.
12. (1) Clause 28 (2) (t) of the Regulation is amended by striking out “Pension Commission of Ontario” in the second line and substituting “Superintendent”.  
(2) Clause 28 (5) (e) of the Regulation is amended by striking out “Commission” in the second line and substituting “Superintendent”.  
(3) Clause 28 (5) (g) of the Regulation is amended by striking out “Commission” in the second line and substituting “Superintendent”.  
(4) Subsection 28 (5.1) of the Regulation is revoked and the following substituted:  
(5.1) The employer shall file a copy of the notice required by subsection 78 (2) of the Act before transmitting it to the persons required by that subsection.  
(5) Subsection 28 (6) of the Regulation is amended by striking out “Commission” in the second line and substituting “Superintendent”.
13. (1) Clause 29 (7) (c) of the Regulation is revoked and the following substituted:  
(c) with respect to which no order has been made under subsection 83 (1) of the Act.  
(2) Subsection 29 (8) of the Regulation is amended by striking out “a declaration under subsection 83 (2) of the Act is made” in the 14th and 15th lines and substituting “an order is made under subsection 83 (1) of the Act”.  
(3) Clause 29 (9) (c) of the Regulation is amended by striking out “where the Commission has made a declaration under section 83 of the Act” in the first and second lines and substituting “where an order has been made under subsection 83 (1) of the Act”.
14. Section 33 of the Regulation is amended,  
(a) by striking out “Where the Commission makes a declaration” in the first line and substituting “Where an order is made”; and  
(b) by striking out “declaration” in the last line and substituting “order”.
15. (1) Subsection 34 (1) of the Regulation is amended,  
(a) by striking out “Where the Commission has made a declaration under subsection 83 (1) of the Act” in the first and second lines and substituting “Where an order has been made under subsection 83 (1) of the Act”; and  
(b) by striking out “at the time of the declaration” in the third and fourth lines and substituting “when the order is made”.  
(2) Subsection 34 (2) of the Regulation is amended,  
(a) by striking out “Where the Commission has made a declaration under subsection 83 (1) of the Act” in the first and second lines and substituting “Where an order has been made under subsection 83 (1) of the Act”; and  
(b) by striking out “at the time of the declaration” in the third line and substituting “when the order is made”.  
(3) Subsection 34 (5) of the Regulation is



amended by striking out “the Commission makes a declaration” in the first line and substituting “an order is made”.

(4) Subsection 34 (7) of the Regulation is amended by striking out “Commission” in the first line and substituting “Superintendent”.

16. (1) Paragraph 2 of subsection 45 (1) of the Regulation is revoked and the following substituted:

2. Any documents relating to the pension plan that must be filed in support of an application for registration of the plan under subsection 9 (2) of the Act (or under a predecessor to that subsection) or in support of an application for registration of an amendment to the plan under subsection 12 (2) of the Act (or under a predecessor to that subsection).

(2) Paragraph 4 of subsection 45 (1) of the Regulation is revoked and the following substituted:

4. Any documents relating to a previous version of the pension plan that must be filed in support of an application for registration of the plan under subsection 9 (2) of the Act (or under a predecessor to that subsection) or in support of an application for registration of an amendment to the plan under subsection 12 (2) of the Act (or under a predecessor to that subsection).

(3) Paragraph 9 of subsection 45 (1) of the Regulation is revoked and the following substituted:

9. Copies of correspondence in respect of the pension plan between the administrator and any of the following persons within five years before the date of the request, but not personal information that relates to a member or former member unless the consent of the member or former member is obtained:

- i. the Commission or the Pension Commission of Ontario or a person employed in the Office of either of them,
- ii. the Superintendent or the Superintendent of Pensions or a person employed in the Office of either of them.

(4) Subsections 45 (2) to (4) of the Regulation are revoked.

17. Subsection 76 (1) of the Regulation is amended by striking out “with the Commission” in the first line.

18. Part III of the Regulation is revoked.

19. This Regulation comes into force on July 1, 1998.



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SECTION	Regulations
INDEX NO.	YREG-28
TITLE	O. Reg. 625/98
APPROVED BY	Cabinet
PUBLISHED	Ontario Gazette, December 19, 1998, and FSCO website
DATE FILED	December 3, 1998

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REGULATION TO AMEND  
REGULATION 909 OF THE REVISED  
REGULATIONS OF ONTARIO, 1990

MADE UNDER THE PENSION BENEFITS ACT

**Note:** Since January 1, 1998, Regulation 909 has  
been amended by Ontario Regulation 307/98.  
For prior amendments, see the Table of  
Regulations in the Statutes of Ontario, 1997.

1. Subsection 8 (3) of Regulation 909 of the  
Revised Regulations of Ontario, 1990 is revoked  
and the following substituted:  
(3) Subsections (1) and (2) do not apply after  
December 31, 2000.



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SECTION	Regulations
INDEX NO.	YREG-30
TITLE	Sec. 91 of the "Tax Credits and Revenue Protection Act, 1998"
APPROVED BY	Cabinet
PUBLISHED	FSCO Pension Bulletin 8/1 and FSCO website
DATE OF ROYAL ASSENT	December 18, 1998

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Section 67 of the Pension Benefits Act was amended by section 91 of the Tax Credits and Revenue Protection Act, 1998, S.O. 1998, c. 34 (formerly Bill 81) when this latter Act received Royal Assent on December 18, 1998.

## PART IX

### PENSION BENEFITS ACT

91. (1) Subsection 67 (1) of the Act is amended by inserting after "surrendered" in the seventh line "in whole or in part".
- (2) Subsection 67 (2) of the Act is amended by inserting after "surrender" in the second line "in whole or in part".
- (3) Section 67 of the Act is amended by adding the following subsection:
- (4) Subsections (1) and (2) do not apply to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement in such circumstances or in such amounts as may be prescribed, subject to such restrictions as may be prescribed.





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SECTION	Information - General
INDEX NO.	I100-003
TITLE	Publication of Decisions made under the Pension Benefits Act, R.S.O.1990, c. P.8
APPROVED BY	Superintendent of Financial Services
PUBLISHED	FSCO Pension Bulletin 8/1 and FSCO website
EFFECTIVE DATE	June 1, 1999

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Under the former Pension Commission of Ontario (the "PCO"), it was the PCO's practice to publish decisions and notices issued in respect of:

- (a) applications on which the Commission made first instance decisions;
- (b) hearings before panels of the Commission;
- (c) certain notices, orders and appointments of administrators by the Superintendent of Pensions; and
- (d) certain enforcement activities taken under the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "PBA").

Other more routine decisions of the Superintendent of Pensions, such as the registration of a plan or the approval of a wind up report, were not published.

The *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 established the Financial Services Commission of Ontario ("FSCO") as the replacement for the PCO, and amended the PBA such that effective July 1, 1998, first instance decisions or proposed decisions under the PBA are made by the Superintendent of Financial Services (the "Superintendent"). The Financial Services Tribunal

(the "FST") holds hearings regarding decisions or proposed decisions of the Superintendent. FSCO intends to continue the practice of publishing significant decisions made by the Superintendent and the FST under the PBA.

This policy sets out the types of decisions which will be published. The categories of information to be routinely published by FSCO in respect of decisions or proposed decisions made under the PBA are:

- (1) Final decisions of the Superintendent on all matters where a Notice of Proposal has been issued, including final decisions on many matters that were not routinely published by the PCO;
- (2) Final decisions of the Superintendent on certain matters where a Notice of Proposal is not required, including final decisions on significant matters such as the allocation of assets from the Pension Benefits Guarantee Fund and the appointment of administrators;
- (3) Requests for hearings before the FST regarding decisions or proposed decisions of the Superintendent, and key dates related to such hearings;



- (4) Decisions of the FST, including interim rulings;  
and
- (5) Charges laid under the PBA, after the first  
appearance before the courts, and the outcome of  
prosecutions.

The types of decisions and information to be routinely published by FSCO in respect of decisions made under the PBA are listed in the appendix to this policy. As was the practice under the PCO, the Superintendent's decisions with respect to routine matters, such as the approval of a wind up report, will not be published by FSCO.



## APPENDIX

### Information to be Published – Category (1):

#### Decisions of the Superintendent on all matters where a Notice of Proposal has been issued

DECISION BY THE SUPERINTENDENT TO:	APPLICABLE SECTION(S) OF THE PBA
refuse to register a pension plan	18(1)(a), 89(1)
revoke the registration of a pension plan that does not comply with the PBA and regulation	18(1)(b), 89(1)
revoke the registration of a pension plan that is not being administered in accordance with the PBA and regulation	18(1)(c), 89(1)
refuse to register an amendment to a pension plan	18(1)(d), 89(1)
revoke the registration of an amendment that does not comply with the PBA and regulation	18(1)(e), 89(1)
refuse to approve an equivalent basis to those criteria specified in ss. 31(3) or 31(4) for part-time employees as a condition precedent to membership in a pension plan where the Superintendent is of the opinion that the basis is not equivalent	31(5), 89(4)
order or refuse to order the administrator to accept an employee as a member of a class of employees	33(1), 89(3)
refuse to approve a payment under s. 42(1) (transfer of commuted value) that does not meet the prescribed requirements	42(7), 89(4)
approve, where the Superintendent imposes terms or conditions, a payment under s. 42(1) that does not meet the prescribed requirements	42(8), 89(4)
order or refuse to order a person to whom payment was made under s. 42(1) to repay the amount in certain circumstances	42(9), 89(2)(a)
refuse to approve a purchase under s. 43(1) (purchase of pension from insurance company) that does not meet the prescribed requirements	43(3), 89(4)
approve, where the Superintendent imposes terms or conditions, a purchase under s. 43(1) that does not meet the prescribed requirements	43(4), 89(4)
order or refuse to order a person to whom payment was made under s. 43(1) to repay the amount in certain circumstances	43(5), 89(2)(b)
refuse to consent to a refund of contributions to a member or former member	63(7) & (8), 89(4)
order the wind up of a pension plan	69(1), 89(5)



DECISION BY THE SUPERINTENDENT TO:	APPLICABLE SECTION(S) OF THE PBA
refuse to approve a payment out of the pension fund of a plan being wound up, before the Superintendent has approved the wind up report	70(3), 89(4)
refuse to approve a wind up report	70(5), 89(4)
consent or refuse to consent to payment of surplus to the employer out of a continuing plan	78(1), 79(1), 89(3.1)
consent or refuse to consent to an employer's application for surplus in a wound up plan	78(1), 79(3), 89(3.1)
consent or refuse to consent to a refund of employer overpayments	78(4), 89(3.2)
refuse to consent to a transfer of assets from one pension fund to another on the sale or disposition of the employer's business or assets	80(4) & (5), 89(4)
order or refuse to order the transferee to return to the pension fund assets transferred without the prior consent of the Superintendent under s. 80(4)	80(6), 89(2)(c)
refuse to consent to a transfer of assets from one pension fund to a successor plan's fund	81(4) & (5), 89(4)
order or refuse to order the transferee to return to the pension fund assets transferred without the prior consent of the Superintendent under s. 81(4)	81(6), 89(2)(d)
refuse to consent to a transfer of assets from one pension fund to another in circumstances where ss. 42, 80 or 81(1) to (7) do not apply	81(8), 89(4)
make or refuse to make an order declaring that the PBGF applies to a pension plan	83(1), 89(2)(d.1)
order or refuse to order an administrator or any other person to take or refrain from taking any action in respect of a pension plan or fund in certain circumstances	87(1), 89(2)(e)
order or refuse to order an administrator to prepare a new valuation report and/or specify assumptions and methods to be used in certain circumstances	88, 89(2)(f)

### Information to be Published – Category (2):

#### Final decisions of the Superintendent on certain matters where Notice of Proposal is not required

DECISION BY THE SUPERINTENDENT TO:	APPLICABLE SECTION(S) OF THE PBA
require a plan administrator to transmit notice of an “adverse” amendment	26(1)
make an order dispensing with notice of an “adverse” amendment by an administrator under s. 26(3)	26(4)





appoint an administrator where a plan does not have one	71(1)
act as administrator where a plan does not have one	71(1)
allocate assets from the PBGF	Regulation 909, s. 34(7)
any other individual decision the Superintendent wishes to publish	

### **Information to be Published – Category (3):**

#### **Requests for hearing before the FST regarding decisions or proposed decisions of the Superintendent and the status of such reviews**

INFORMATION REGARDING:	APPLICABLE SECTION(S) OF THE PBA
requests for reviews by the FST of decisions or proposed decisions of the Superintendent and the status of such reviews	89

### **Information to be Published – Category (4):**

#### **Decisions of the FST, including interim rulings**

INFORMATION REGARDING:	APPLICABLE SECTION(S) OF THE PBA
decisions of the FST, including interim rulings	89

### **Information to be Published – Category (5):**

#### **Charges laid under the PBA, and the outcome of prosecutions**

INFORMATION REGARDING:	APPLICABLE SECTION(S) OF THE PBA
laying of charges for contraventions of the PBA, regulations or orders under the PBA	109
convictions and penalties resulting from charges laid under the PBA, including the results of appeals of such convictions	110



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SECTION	Life Income Fund/Locked-In Retirement Account
INDEX NO.	L050-655
TITLE	1999 Maximum Withdrawal Amount Table
APPROVED BY	Superintendent of Financial Services
PUBLISHED	FSCO Pension Bulletin 8/1 and FSCO website
EFFECTIVE DATE	January 4, 1999

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The attached table has been prepared by the Financial Services Commission of Ontario. Additional copies of this table and copies of articles published by the Financial Services Commission of Ontario about the Ontario LIF are available for pick-up from FSCO's reception, 4th. Floor, 5160 Yonge Street, North York, Ontario.

**Interest Assumptions Used in Table:**

- (1) 6.00%, which represents the greater of the CANSIM B14013 rate for December, 1998 (5.08%) and 6.00%, for the first 15 years, and
- (2) 6.00% for the years remaining to the end of the year in which the planholder attains 90 years of age. (Assumption to age 90 is for the purpose of maximum withdrawal calculation only. The balance of a LIF must be used to purchase a life annuity by the end of the year in which the planholder attains 80 years of age.)

Percentages shown must be prorated for the initial fiscal year if less than twelve months. Part of a month is treated as a full month.



### 1999 Maximum Annual Withdrawal Amount Table for an Ontario Life Income Fund (LIF)

Age at January 1, 1999	New Age During 1999	Years to Age 90 is Attained	Maximum Withdrawal asa Percentage of the LIF Balance at January 1, 1999
48	49	42	6.19655%
49	50	41	6.23197%
50	51	40	6.26996%
51	52	39	6.31073%
52	53	38	6.35454%
53	54	37	6.40164%
54	55	36	6.45234%
55	56	35	6.50697%
56	57	34	6.56589%
57	58	33	6.62952%
58	59	32	6.69833%
59	60	31	6.77285%
60	61	30	6.85367%
61	62	29	6.94147%
62	63	28	7.03703%
63	64	27	7.14124%
64	65	26	7.25513%
65	66	25	7.37988%
66	67	24	7.51689%
67	68	23	7.66778%
68	69	22	7.83449%
69	70	21	8.01930%
70	71	20	8.22496%
71	72	19	8.45480%
72	73	18	8.71288%
73	74	17	9.00423%
74	75	16	9.33511%
75	76	15	9.71347%
76	77	14	10.14952%
77	78	13	10.65661%
78	79	12	11.25255%
79	80	11	11.96160%

\* The maximum annual withdrawal amount percentage is calculated on the basis of a twelve-month fiscal year to December 31, 1999 using the interest assumptions on page 1.



SECTION	Spousal Rights
INDEX NO.	S500-901
TITLE	Same-Sex Spouse Survivor Benefits The Trustees of the OPSEU Pension Plan v. Her Majesty the Queen et al.
APPROVED BY	Superintendent of Financial Services
PUBLISHED	FSCO Pension Bulletin 8/1 and FSCO website
EFFECTIVE DATE	December 8, 1998

What did the Ontario Court of Justice (General Division) decide in the recent case of The Trustees of the OPSEU Pension Plan v. Her Majesty the Queen et al?

The Trustees of the Ontario Public Service Employees Union Pension Plan (OPSEU) filed an application in the Ontario Court (General Division) asking for directions on whether the definition of spouse in the *Pension Benefits Act* (the “PBA”) contravenes the *Canadian Charter of Rights and Freedoms* (the “Charter”). The application was heard on December 4 and the decision was released on December 8, 1998.

The court held that the definition of “spouse” in the PBA contravenes the Charter as discrimination based on sexual orientation. The appropriate remedy for this violation is to strike out the words “either a man or a woman” from the PBA definition of spouse and to substitute therefor the words “either one individual or another, whether of the same or opposite sex”.

The decision took effect immediately. Although the Attorney-General has filed notice of appeal, no stay was sought. The decision is therefore the law of Ontario unless a higher court rules otherwise.

Do pension plan texts have to be amended in order

to comply with the above decision?

No. The plan administrator must administer the plan and fund in accordance with the PBA even if the plan has not been specifically amended to comply. However, it is good practice to amend the plan so that it complies with the PBA.

Do pension plans have to provide same-sex survivor benefits?

Because the PBA definition of spouse is to be read to include “same-sex” spouses, plan administrators must provide the spousal benefits required by the PBA to same-sex spouses, regardless of the plan text. A plan administrator who refuses to provide survivor benefits to same-sex spouses would be in breach of the PBA.

Will employers now be required to fund same-sex survivor benefits?

Yes. Employers will have to ensure that their plans are funded to support the additional cost of survivor benefits to same-sex spouses. However, the cost of funding these benefits will likely be minimal.

Will the Superintendent accept an amendment to a plan, or a plan text, which extends survivor benefits





### **to same-sex spouses of pension plan members?**

Yes. Although all plans must be administered as if they comply with the amended PBA definition of spouse, it is good practice to amend the plan text specifically in order to provide for same-sex spousal benefits. The Superintendent will accept such an amendment if it otherwise meets the requirements of the PBA.

### **Could the court appeal affect obligations under the PBA?**

If the appeal is pursued and the appeal court reverses the declaration of invalidity of the “definition of spouse” in the PBA, then pension plans would no longer be obliged to provide same-sex survivor benefits nor fund same. However, the Superintendent would still accept amendments to plans to provide same-sex benefits, as these would be benefits more advantageous than the spousal survivor benefits required by the PBA.



## Superintendent of Financial Services - Notices and Orders

### Notices of Proposal to Make an Order

The Superintendent of Financial Services pursuant to subsection 89(5) of the PBA [Notice of Proposed Wind-Up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) Pension Plan for Employees of Trenton Machine Tool Inc., 0589028 (formerly C-15106, (effective October 31, 1995), January 29, 1999
- 2) Peoples Jewellers Limited Executive Pension Plan, (0597666 (formerly C-16089) (effective March 3, 1993), January 12, 1999

### Notices of Proposal to Refuse to Approve a Partial Wind Up Report - Subsection 70(5) of the PBA

The Superintendent of Financial Services issued Notices of Proposal to Refuse to Approve a Partial Wind Up Report pursuant to subsection 70(5) of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) Pension Plan for the Unionized Employees of Asea Brown Boveri Inc., 683433 (effective August 11, 1994), as amended November 6, 1998
- 2) Pension Plan for Employees of Monsanto Canada Inc., 341230 (effective between April 30, 1997 to December 31, 1998), November 30, 1998

### Notices of Proposal to Consent to a Refund of Employer Contributions - Subsection 78(4) of the PBA

The Superintendent of Financial Services pursuant to subsection 78(4) of the PBA [Notice to Consent to a Refund of Employer Contributions], issued Notices of Proposal to Make an Order pursuant to section 78(4) of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) Pension Plan for Employees of Wm. H. McGee & Co. Of Canada Ltd., 328344 (effective January 12, 1999)
- 2) Hospitals of Ontario Pension Plan, 346007, (effective February 15, 1999)

### Orders - Section 69 of the PBA

The Superintendent of Financial Services issued Orders pursuant to subsection 69 of the PBA as follows (effective date of wind up and date of order indicated):

- 1) A.M. International Inc. Pension Plan for Management Employees, 0361980 (formerly C-12201) (effective October 17, 1996), November 10, 1998
- 2) A.M. International Inc. Pension Plan for Hourly Employees, 0361998 (formerly C-12212) (effective October 17, 1996), November 10, 1998
- 3) A.M. International Inc. Pension Plan (1979), 0202044 (formerly C-12200) (effective October 17, 1996), November 10, 1998
- 4) Pension Plan for the Hourly-Rated Employees of Barrymore Carpet Division of Carpita Corporation, C-14852 (Effective June 29, 1990), October 29, 1998
- 5) Consolidated GenCorp Canada Inc. Hourly Pension Plan, 0577072, (effective September 27, 1991), November 13, 1998
- 6) Consolidated GenCorp Canada Inc. Salaried Pension Plan, 0345512, (effective September 27, 1991), November 13, 1998

### Appointments of Administrators - Section 71 of the PBA

The Superintendent of Financial Services appointed third party administrators pursuant to subsection 71(1)



of the PBA to wind up the plan in whole or in part.

- 1) Deloitte and Touche appointed as administrator of H-Can Industries Pension Plan, PN C0192158 effective September 11, 1997.
- 2) Metropolitan Life Insurance appointed as administrator of Pritchard Andrews Company Employees' Pension Plan, PN C0591388 effective May, 13, 1998.
- 3) Arthur Anderson Inc. appointed as administrator of Norman Wade Company Limited Employees Retirement Plan, PN C0315176 effective June 19, 1998.
- 4) Arthur Anderson Inc. appointed as administrator of Moyer Vico Corporation Shareholder Plan, PN C1037704, effective June 10, 1998.
- 5) Manufacturers Life appointed as administrator of C & C International Employees' Plan, PN C0687632, effective June 10, 1998.
- 6) Arthur Anderson Inc. appointed as administrator of Moyer Vico Corporation Employees' Plan, PN C0465070, effective June 11, 1998.
- 7) Manufacturers Life appointed as administrator of Aerodat Inc. Employees' Pension Plan, PN C1026970, effective August 7, 1998.
- 8) Imperial Life appointed as administrator of Norman Wade Company Limited Pension Plan, PN C0957316, effective September 15, 1998.
- 9) Mutual Life of Canada appointed as administrator of Tobac Curing System Employees' registered Plan, PN C0525691, effective September 15, 1998.
- 10) London Life appointed as administrator of Recreational Services International Inc. Employees' Retirement Plan, PN C1002682 effective December 23, 1998.
- 11) Deloitte and Touche appointed as administrator of Airvector Inc. Salaried Employees's Retirement Plan, PN C-9339, effective February 10, 1999.
- 12) Arthur Anderson Inc. Appointed as administrator of US1 Canada Inc. And its subsidiaries, PN 0411140, effective February 10, 1999.



## Tribunal Activities

### Appointments of Financial Services Tribunal Members

Name and O.C.	Effective Date of Appointment	Expiry Date
Milczynski, Martha (Acting Chair) O.C. 1808/98 (Vice-Chair)	January 13, 1999 July 8, 1998	July 7, 2001
McNairn, Colin (Vice-Chair) O.C. 1809/98	July 8, 1998	July 7, 2001
Bush, Kathryn M. (Acting Vice-Chair) O.C. 904/97	January 13, 1999 May 14, 1997	June 16, 1999
Erlichman, Louis O.C. 2527/98 O.C. 1592/98	December 9, 1998 June 17, 1998	December 8, 2001 December 16, 1998
Forbes, William M. O.C. 520/98	March 25, 1998	March 24, 2001
Gavin, Heather O.C. 11/99	January 13, 1999	January 12, 2002
Greville, M. Elizabeth O.C. 222/99 O.C. 2405/95	January 27, 1999 February 8, 1996	January 26, 2002 February 7, 1999
Martin, Joseph P. O.C. 1810/98	July 8, 1998	July 7, 2001
Moore, C.S. (Kit) O.C. 1591/98	July 1, 1998	June 30, 2001
Robinson, Judy O.C. 905/97	May 14, 1997	May 13, 2000
Stephenson, Joyce Anne O.C. 2409/98 O.C. 1930/95	November 4, 1998 October 28, 1995	November 3, 2001 October 27, 1998
Wires, David E. O.C. 257/97	February 27, 1997	February 26, 2000





## Hearings Before the Pension Commission of Ontario (PCO)

### **Westinghouse Canada Inc. Consolidated Pension Plan (the "Consolidated Plan"), Registration Number 526632, FST File #X-0001**

In September 1993, Westinghouse Canada Inc. requested a hearing concerning the Superintendent's Notice of Proposal to Make an Order that the Plan be wound up in part effective October 1, 1992, in respect of all members and former members of the Plan who became employees of Asea Brown Boveri Inc. A pre-hearing conference was held on July 14, 1994. In November 1994, the proceeding was adjourned pending the final outcome of the GenCorp case. By letter dated December 3, 1998, the applicant withdrew its request for a hearing.

### **Westinghouse Canada Inc. Pension Plan, Registration Number 348409, FST File #X-0002**

In May 1995, Westinghouse Canada Inc. requested a hearing regarding the Superintendent's three Notices of Proposal to Make an Order requiring the Plan to be wound up in part. In September 1995, the proceeding was adjourned *sine die* pending the final outcome of the GenCorp case. By letter dated December 3, 1998, the applicant withdrew its request for a hearing.

### **Pension Plan for Unionized Employees of Asea Brown Boveri Inc. Located at London, Burlington and St. Jean, 683433, FST File X-0003**

In July 1996, the Superintendent issued a notice refusing to approve the wind up report filed by Asea Brown Boveri Inc. ("ABB") on the grounds that the wind up report did not provide "grow-in" benefits in accordance with s. 74 of the Pension Benefits Act ("PBA"). ABB requested a hearing. Plan members belong to the CAW. The Union advised the Registrar that it wished to be a party to the hearing.

In May 1997, the Superintendent requested that the matter be adjourned pending the outcome of the GenCorp case. In July 1997, the matter was adjourned

*sine die* for a period not exceeding one year.

On November 6, 1998, the Superintendent of Pensions issued an Amended Notice of Proposal to Refuse to Approve a Wind Up Report. A pre-hearing conference was held on January 22, 1999.

At the pre-hearing conference it was agreed that the parties would try to resolve some of the issues, and agreed that a telephone conference call will be held on June 30, 1999 to determine if the pre-hearing conference should be reconvened.

### **Babcock & Wilcox Industries Ltd. Salaried Employees Retirement Plan, Registration Number 205690, FST File #X-0004**

Request by counsel for certain former employees of Babcock & Wilcox Industries Ltd., Bailey Controls Division (the "Former Babcock Employees") for a hearing regarding the Superintendent's registration of two amendments to the Plan on January 10, 1996. A pre-hearing conference scheduled for January 9, 1997, was adjourned *sine die*. In October 1998, the Former Babcock Employees withdrew their application for a hearing.

### **Clergy Retirement Pension Plan of the Diocese of Hamilton, FST File #X-0005**

In September 1996, the Superintendent issued a notice proposing to order the Diocese of Hamilton to register its pension plan in accordance with ss.9(2) of the PBA. The Diocese of Hamilton requested a hearing. A pre-hearing commenced in May 1997, and was continued in September 1997 and February, 1998. Hearing dates were scheduled for October 13, 14, 15 and 16, 1998. By letter dated August 26, 1998, Revenue Canada advised that the pension plan is, in part, a retirement compensation arrangement (RCA) as defined in subsection 248(1) of the Income Tax Act. The Superintendent requested that the hearing be adjourned *sine die* to allow the Superintendent to



consider the matter.

**McDonnell Douglas Canada Ltd. Salaried Plan,  
Registration Number 520593, FST File #X-0006**

In November 1996, the Superintendent advised certain former members of the McDonnell Douglas Plan that he would not order the partial wind up they had requested. In December 1996, an individual, on behalf of a group of former McDonnell Douglas Employees, requested a hearing regarding the Superintendent's refusal to order a partial wind-up of the Plan.

A pre-hearing was held in July 1997, and continued in October and November 1997. A jurisdictional hearing was held on March 27, 1998. The hearing panel decided that the PCO has jurisdiction to hear this matter pursuant to Section 89 of the PBA. Reasons for Decision were issued on May 25, 1998. A hearing on the merits was held on November 4, 5 and 6, 1998 and continued on February 9 and 10, 1999. The panel reserved its decision.

**Pension Plan for Employees of the Catholic  
Cemeteries Archdiocese of Toronto, Registration  
Number 309278, FST File #X-0008**

In March 1997, the Labourers' International Union of North America, Local 506, (the "Union") requested a hearing on behalf of two seasonal employees pursuant to s. 89 of the PBA following the Superintendent's refusal to make orders requested by the Union. The Union seeks the following orders: (1) that the Superintendent of Pensions require the Archdiocese of Toronto to admit the two seasonal employees as members of the Pension Plan for Employees Catholic Cemeteries - Archdiocese of Toronto, with service credit from their original dates of hire; (2) a declaration that the exclusion of seasonal employees from Plan membership contravenes s.31(3) of the PBA; and, (3) a declaration that the Superintendent of

Pensions violated the principles of natural justice, and the PBA and Regulation, in failing to disclose to the Union and the seasonal employees, copies of submissions made by the Archdiocese of Toronto in response to the Union's request for an Order.

A pre-hearing conference was held on October 7, 1998. On April 6, 1999, the Applicant withdrew its request for hearing.

**Ontario Hydro Pension and Insurance Plan,  
Registration Number 352377, FST File #X-0010**

In October of 1997, Ontario Hydro commenced an application in the Ontario Court (General Division) asking for a declaration that a dual valuation method was permissible under both the PBA and the Power Corporation Act in respect of Ontario Hydro's actuarial valuation reports prepared for funding purposes. In December of 1997, the Power Workers Union asked the PCO to make an order under s.88 of the PBA requiring the plan administrator to cease using the dual valuation method and to submit a new report.

The Power Workers Union and the Society of Ontario Hydro Professional and Administrative Employees, the two respondents in the court application, brought a motion to have the court application dismissed or stayed on the ground that it was premature and that the PCO was the appropriate adjudicative body to determine the issue. Intervention was granted to the PCO to participate in this motion as a friend of the court. The intervention motion was heard on February 2, 1998, and the prematurity motion was heard on February 2 and 3, 1998. On May 6, 1998, the court dismissed Hydro's application.

By letter dated June 22, 1998, the Power Workers Union withdrew their request for the PCO to deal with the matter.



On June 29, 1998, The Society of Ontario Hydro Professional and Administrative Employees requested that the PCO proceed with the matter. A pre-hearing conference was held on October 21, 1998. In a letter dated December 8, 1998, The Society of Ontario Hydro Professional & Administrative Employees withdrew its request for hearing.

**Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851, FST File #X-0011**

In February 1997, the Canadian Union of Public Employees, Locals No. 1144 and 1590 ("CUPE") requested a hearing pursuant to s. 89 of the PBA with respect to the Superintendent's decisions dated January 13, 1997, concerning the transfer of assets from the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, 302851 (the "Plan"), to the St. Joseph's Health Centre Pension Plan, the Providence Centre Pension Plan and the Morrow Park Plan (the "New Plans"). Four of the orders requested were intended to prohibit the asset transfers. The other four orders requested sought: (a) declarations that the Plan and the New Plans constitute a multi-employer pension plan ("MEPP") established pursuant to a collective agreement or trust agreement, and (b) orders that the Plan be administered by a board of trustees of whom at least half are representatives of Plan members.

A pre-hearing conference was held in July 1997. A hearing on jurisdictional issues was held in January 1998. The hearing panel decided that the PCO has the jurisdiction to hold a hearing into whether the Pension Plan is a MEPP. A Disclosure Motion was heard on July 27, 1998 before the full panel, and a decision with reasons was released on September 9, 1998. A hearing on the merits was held on October 26, 27 and November 17, 1998. The PCO found that the Pension Plan did not meet the definition of a

MEPP under the PBA, and therefore is not subject to the requirements of s.8(1)(e) of the PBA.

**CWA/ITU Pension Plan (Canada), Registration Number 554717, FST File #X-0012**

In March 1998, the Communications, Energy and Paperworkers Union of Canada ("CEP") requested a s.89 hearing regarding a proposed partial wind-up of the Plan. It asked the PCO: (a) to rescind the resolution of the Trustees to partially wind up the plan; (b) to order the Trustees and Administrator not to take any steps to realize the partial wind up; (c) to require the Plan to accept employer contributions on behalf of active members for work performed after December 31, 1997; and (d) to order the Trustee to fully consider dividing the Plan's assets and liabilities on an equitable basis between a CWA/ITU Plan and a Union Plan based on the number of retirees and the number of active participants.

A jurisdictional motion was heard on February 15, 1999. The hearing took place from February 22 through 26, 1999. The panel reserved its decision.

**Ontario Hydro Pension and Insurance Plan, Registration Number 352377, FST File #X-0014**

In March 1998, a former member of the Ontario Hydro Pension and Insurance Plan requested a hearing under s. 89 of the PBA, with respect to the refusal of the Superintendent to issue a Notice of Proposal under s. 87 of the Act. A pre-hearing conference was held on September 16, 1998. By letter dated November 26, 1998 the former member withdrew his request for a hearing.



## Pension Hearings Before the Financial Services Tribunal

### Retirement Plan for Salaried Employees of Cooper Canada - Plan A, Registration Number 240622, FST File #P-0015

A request for a hearing was received on August 7, 1998 with respect to the Superintendent's Notice of Proposal to Make an Order dated July 2, 1998 that the Plan be wound up in part with respect to those members and former members of the Plan who were employed by Cooper Industries (Canada) Inc. ("Cooper") at its Port Hope, Ontario location and who ceased to be employed by Cooper from March 26, 1991 to March 30, 1992 or the date the last Plan member ceased to be employed by Cooper at its Port Hope location, whichever is later.

Cooper seeks an order to direct the Superintendent to refrain from carrying out the proposal to partially wind up the Plan and to stay the requirement to provide notice of the proposed wind-up order pending the outcome of the hearing, or to consolidate such notice with the notice of hearing, or to dispense with such notice.

A pre-hearing conference was held on October 26, 1998. Hearing dates were scheduled for March 30 and 31, 1999.

By letter dated March 3, 1999, Cooper withdrew its request for hearing. In a subsequent letter dated March 4, 1999, counsel for the members and former members of the Plan asked the Tribunal to order Cooper to pay costs of \$3,500. Following receipt of written submissions from the parties, the Tribunal denied the request for costs, for the reasons set out in a written decision dated April 6, 1999, and agreed to the withdrawal of the request for hearing.

### Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230, FST File #P-0013

On November 30, 1998, the Superintendent issued a Notice of Proposal to Refuse to Approve a Partial Wind Up Report. On December 31, 1998, Monsanto Canada Inc. ("Monsanto") requested a hearing. Monsanto requests an order directing the Superintendent to approve the partial wind-up report pursuant to s.89(9) of the PBA.

A pre-hearing conference was held on April 7, 1999.





## Commission Decisions – Applications Approved Since October 28, 1998

(Note: In this section, “Commission” refers to the Pension Commission of Ontario.)

### Commission Decisions - Applications October 28, 1998

#### **Surplus Withdrawal on Plan Wind Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909, (as amended by O.Reg.743/91) and s. 78(1) and 79(3) of the Act**

At the Commission meeting held October 28, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

#### **Pension Plan for Permanent Employees of P. Lawson Travel, doing business as Carlson Wagonlit Travel, Registration Number 449819**

Payment of surplus to Carlson Wagonlit Travel from the Pension Plan for Permanent Employees of P. Lawson Travel, doing business as Carlson Wagonlit Travel, Registration Number 449819, in the amount of 50% of the surplus in the plan (total surplus estimated to be \$185,000 as at June 30, 1997) plus investment earnings thereon to the date of payment and subject to adjustments to reflect fees and final settlement values.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

### **Pension Benefits Guarantee Fund (PBGF)**

#### **Notice of Proposed Declarations**

On October 28, 1998, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

Revised Pension Plan for Employees of G.W. Martin Veneer Ltd. (Searchmount Division), Hourly Employees, Registration Number 414730

#### **Allocations, subsection 34(7) of Regulation 909 under the PBA**

On October 28, 1998, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

#### **(a) Pension Plan for Salaried Employees of Provincial Crane Inc., Registration Number 957514**

Allocate and pay an amount not to exceed \$414,520 to provide, together with the assets of the Plan, for the benefits determined under section 34 of the Regulations;

And that a prior Allocation from the Pension Benefits Guarantee Fund made by the Pension Commission of Ontario on May 25, 1995 to pay to the **Pension Plan for Salaried Employees of Provincial Crane Inc.,** Registration Number 957514 is revoked.



**Commission Decisions - Applications November 25, 1998**

**Surplus Withdrawal on Plan Wind Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909, (as amended by O.Reg. 743/91) and s. 78(1) and 79(3) of the Act**

At the Commission meeting held November 25, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Executive Employees of Ascoelectric Limited, Registration Number 475012**

Payment of surplus to Ascoelectric Limited from the Pension Plan for Executive Employees of Ascoelectric Limited, Registration Number 475012, in the amount of 100% of the surplus in the plan (\$17,443 as at January 31, 1997) plus investment earnings thereon to the date of payment and adjusted for fees and expenses to the date of payment.

**(b) Pension Plan for Employees of Pride of Paris Fabrics Limited, Registration Number 385062**

Payment of surplus to Richter & Partners Inc., Receiver Manager of the Estate of Pride of Paris Fabrics Limited, a Bankrupt, from the Pension Plan for Employees of Pride of Paris Fabrics Limited, Registration Number 385062, in the amount of 50% of the surplus in the plan (total surplus estimated to be \$311,550.40 as at August 20, 1998) plus investment earnings thereon to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid,

purchased or otherwise provided for.

**(c) Pension Plan for Employees of RB & W Corporation of Canada, Registration Number 935056**

Payment of surplus to RB & W Corporation of Canada, from the Pension Plan for Employees of RB & W Corporation of Canada, Registration Number 935056, in the amount of 70.92% of the surplus in the plan (total surplus estimated to be \$415,763 as at December 31, 1997) plus investment earnings thereon to the date of payment and adjusted for all other gains or losses to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

**(d) Pension Plan for Designated Employees of Leigh Metal Products Ltd., Registration Number 569798**

Payment of surplus to Milcor Limited Partnership, from the Pension Plan for Designated Employees of Leigh Metal Products Ltd., Registration Number 569798, in the amount of 50% of the surplus in the plan (total surplus estimated to be \$74,167.00 as at June 30, 1998) plus investment earnings thereon to the date of payment and any adjustments for any further expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.



**(e) Registered Pension Plan for the Employees of  
Brush Fuses Canada Inc., Registration Number  
981464**

Payment of surplus to Cooper Industries (Canada) Inc., from the Registered Pension Plan for the Employees of Brush Fuses Canada Inc., Registration Number 981464, in the amount of 60% of the surplus in the plan (total surplus estimated to be \$49,657.00 as at December 31, 1993) plus investment earnings thereon to the date of payment and minus the consulting fees, legal fees and disbursements incurred by the Applicant and all other costs and expenses related to the continuing administration and wind up of the plan.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

**(f) Retirement Benefit Plan for the Employees of  
The Police Credit Union Limited, Registration  
Number 277236**

Payment of surplus to The Police Credit Union Limited from the Retirement Benefit Plan for the Employees of The Police Credit Union Limited, Registration Number 277236, in the amount of 100% of the surplus in the plan (estimated to be \$190,726 as at April 30, 1996) plus investment earnings thereon to the date of payment, less expenses.

**Applications Under s. 8 of the Reg. 909, R.R.O.  
1990 (as amended by O.Reg. 743/91) s. 78(1) of the  
PBA - Request for Consent of the Commission to  
Surplus Withdrawal on Plan Wind Up to be filed in  
Court**

At the Commission meeting held November 25, 1998, the Commission consented pursuant to subsection

78(1) of the PBA and clause 8(2) of the Regulation, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**Pension Plan for Canadian Employees of The  
Insurance Corporation of Ireland Limited,  
Registration Number 381483**

Payment of surplus to the Applicant, ICAROM Public Limited Company, from the Pension Plan for Canadian Employees of The Insurance Corporation of Ireland Limited, Registration Number 381483, in the amount of 80% of the aggregate of (i) \$752,000 (the amount of surplus estimated to be in the Plan as at November 1, 1985, the effective date of the wind-up) plus (ii) the investment earnings on the surplus under the Plan from November 1, 1985 to the date of payment to the Applicant, less (iii) all fees, costs and expenses related to the continuing administration and wind-up of the Plan and any prior payment of surplus to the Applicant authorized by the Commission.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulation.

**Pension Benefits Guarantee Fund (PGBF)**

**Notice of Proposed Declarations**

On November 25, 1998, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection



83(1) of the PBA that the PBGF applies to the following pension plan:

Pension Plan for Employees of Glen L. Coulter Financial Services Ltd., Registration Number 0486357

**Commission Decisions - Applications December 10, 1998**

**Surplus Withdrawal on Plan Wind Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909, (as amended by O.Reg.743/91) and s. 78(1) and 79(3) of the Act**

At the Commission meeting held December 10, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) The Canadian System Federation Pension Plan, Registration Number 248799**

Payment of surplus to the Canadian System Federation of the Brotherhood of Maintenance of Way Employees from The Canadian Pacific System Federation Pension Plan, Registration Number 0248799, in the amount of 43.4% of the surplus in the plan (total surplus in the plan estimated to be \$280,170 as at September 30, 1993) plus investment earnings thereon to the date of payment, less expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

**(b) Confederation Life Insurance Company Pension Plan for Canadian Field Representatives, Registration Number C-14329**

Based upon

- (i) the Application of Confederation Life Insurance Company in Liquidation (the "Applicant"), dated November 16, 1998, as supplemented on November 27, 1998 and further supplemented on December 9, 1998 (the "Application");
- (ii) the submission of other documents as required under the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "Act") and Regulation 909, R.R.O. 1990, as amended ("Regulation 909"), including the Surplus Sharing Agreement; and
- (iii) oral submissions made to the Pension Commission of Ontario (the "Commission") at its meeting of December 10, 1998,

the Commission gave its conditional consent pursuant to subsection 78(1) and 79(3) of the Act and clause 8(1)(b) of Regulation 909, to the payment of surplus to the Applicant from the Field Plan in the amount of the Estate's Share as set out in the Application. The Estate's Share of the Surplus has been estimated to be approximately \$6,919,000 as at October 31, 1998 (taking into account investment earnings and adjustments contemplated in accordance with the Surplus Sharing Agreement).

The payment of Surplus is to be allocated and distributed to the Applicant and the Surplus Sharing Group in accordance with the terms of the Surplus Sharing Agreement, the terms of the Order of the Honourable Mr. Justice Winkler dated October 30, 1998 and the Supplementary Wind-up Report. Upon the Commission's consent becoming unconditional (as described below) and the reference being determined by a Master of the Ontario Court (General Division), the Surplus will be distributed in four stages as follows:

1. The first distribution will be made forthwith after the PCO Consent Date and the determination by the Master and will consist of: (i) setting aside the Contingency Reserve; (ii) setting aside the





Reserve and payment of the Representatives' Costs incurred to the date of such distribution from the Reserve; (iii) transfer of the CREF, the ILM, the CREF Distributions and the ILM Distributions as and when directed to do so by the Liquidator; and (iv) payment of the remainder of up to 90% of the Estate's Share to the Estate.

2. The second distribution will be made forthwith after or contemporaneously with the first distribution and will consist of: (i) payment of 90% of the Members Share to the members of the Surplus Sharing Group in accordance with the options selected by the members; and (ii) payment of the Representatives' Costs from the date of completion of the first distribution to the date of completion of the second distribution from the Reserve.
3. The third distribution shall consist of the balance of the funds in the Reserve, if any, in the following proportions: (i) 75% to the members of the Surplus Sharing Group and 25% to the Estate and (ii) the remaining 10% of the Estate's Share to the Estate and the remaining 10% of the Members Share to the members of the Surplus Sharing Group.
4. The fourth distribution shall be made on the fifth anniversary of the PCO Consent Date. The distribution shall consist of payment of the balance of the Contingency Reserve, if any, to the Estate.

The Commission's consent to the payments to the Applicant out of the Field Plan shall not become effective and unconditional until the Applicant has provided to the satisfaction of the Commission fully executed documents in substantially the same form and content as those contained in the Application and listed in Appendix A to the minutes.

**(c) Confederation Life Insurance Company Pension Plan for Salaried Employees, Registration Number 277541**

Based upon

- (i) the Application of Confederation Life Insurance Company in Liquidation (the "Applicant"), dated November 6, 1998, as supplemented on November 23, 1998 and further supplemented on December 8, 1998 (the "Application");
- (ii) the submission of other documents as required under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "Act") and Regulation 909, R.R.O. 1990, as amended ("Regulation 909"), including the Surplus Sharing Agreement; and
- (iii) oral submissions made to the Pension Commission of Ontario (the "Commission") at its meetings of November 25 and December 10, 1998,

the Commission gave its conditional consent pursuant to subsection 78(1) and 79(3) of the Act and clause 8(1)(b) of Regulation 909, to the payment of surplus to the Applicant from the Salaried Plan in the amount of the Estate's Share as set out in the Application. The Estate's Share of the Surplus has been estimated in the Supplementary Wind-up Report to be approximately \$46,855,000 as at October 31, 1998 (taking into account investment earnings and adjustments contemplated in accordance with the Surplus Sharing Agreement).

The payment of Surplus is to be allocated and distributed to the Applicant and the Surplus Sharing Group in accordance with the terms of the Surplus Sharing Agreement, the terms of the Order of the Honourable Mr. Justice Winkler dated October 30, 1998 and the Supplementary Wind-up Report. Upon the Commission's consent becoming unconditional (as described below) and the reference being determined by a Master of the Ontario Court (General Division),



the Surplus will be distributed in four stages as follows:

1. The first distribution will be made forthwith after the PCO Consent Date and the determination by the Master and will consist of: (i) setting aside the Contingency Reserve; (ii) setting aside the Reserve and payment of the Representatives' Costs incurred to the date of such distribution from the Reserve; (iii) transfer of the CREF, the ILM, the CREF Distributions and the ILM Distributions as and when directed to do so by the Liquidator; and (iv) payment of the remainder of up to 90% of the Estate's Share to the Estate.
2. The second distribution will be made forthwith after or contemporaneously with the first distribution and will consist of: (i) payment of 90% of the Members Share to the members of the Surplus Sharing Group in accordance with the options selected by the members; and (ii) payment of the Representatives' Costs from the date of completion of the first distribution to the date of completion of the second distribution from the Reserve.
3. The third distribution shall consist of the balance of the funds in the Reserve, if any, in the following proportions: (i) 75% to the members of the Surplus Sharing Group and 25% to the Estate and (ii) the remaining 10% of the Estate's Share to the Estate and the remaining 10% of the Members Share to the members of the Surplus Sharing Group.
4. The fourth distribution shall be made on the fifth anniversary of the PCO Consent Date. The distribution shall consist of payment of the balance of the Contingency Reserve, if any, to the Estate.

The Commission's consent to the payments to the Applicant out of the Salaried Plan shall not become effective and unconditional until the Applicant has

provided to the satisfaction of the Commission fully executed documents in substantially the same form and content as those contained in the Application and listed in the Appendix B to the minutes.

#### **Commission Decisions - Applications January 28, 1999**

#### **Surplus Withdrawal on Plan Wind Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909, (as amended by O. Reg. 743/91) and s. 78(1) and 79(3) of the Act**

At the Commission meeting held January 28, 1999, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

#### **(a) The Retirement Plan for Manufacturing Hourly Paid Employees of LaSalle Machine Tool of Canada Limited, Registration Number 570671**

Payment of surplus to 143420 Ontario Inc. from The Retirement Plan for Manufacturing Hourly Paid Employees of LaSalle Machine Tool of Canada, Limited, Registration Number 570671, in the amount of \$190,700 as at October 31, 1996, adjusted for investment earnings thereon, actual expenses incurred in connection with the wind up and actual benefit payments made in respect of the wind up of the plan.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

#### **(b) Pension Plan for Salaried Employees of Munich Reinsurance Company of Canada and The Great**



**Lakes Reinsurance Company, Registration  
Number 519702**

Payment of surplus to The Great Lakes Reinsurance Company from the Pension Plan for Salaried Employees of Munich Reinsurance Company of Canada and The Great Lakes Reinsurance Company, Registration Number 519702, in the amount of 49.9% of the surplus in the plan (total surplus in the plan estimated to be \$1,211,800 as at October 1, 1997) adjusted to reflect investment earnings or losses and expenses plus other gains / losses such as annuity purchase prices.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

**(c) Federated Genco Limited, Local 6979, United  
Steelworkers of America Pension Plan,  
Registration Number 214569**

Payment of surplus to Federated Genco Limited from the Federated Genco Limited, Local 6979, United Steelworkers of America Pension Plan, Registration Number 214569, in the amount of 50% of the surplus in the plan (total surplus in the plan estimated to be \$167,099 as at August 31, 1994) plus a proportional adjustment for interest and expenses from the date of wind up to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

**(d) Seiko Canada Inc. Pension Plan, Registration  
Number 493437**

Payment of surplus to Seiko Canada Inc. from the Seiko Canada Inc. Pension Plan, Registration Number 493437, in the amount of 50% of the surplus in the plan (total surplus in the plan estimated to be \$1,781,000 as at November 30, 1997) plus investment earnings and less expenses thereon to the date of payment.

The Commission consented to the course of action proposed by the Applicant, Seiko Canada Inc., set out in Ms. N. Peterson's letter of January 27, 1999, whereby the Applicant will approach insurance companies to request annuity quotations to provide for the amounts of basic benefits and surplus entitlement of 18 former members of the plan ("Unlocated Beneficiaries") who, despite all reasonable efforts, the Applicant has been unable to locate. The insurance companies will be required to hold the lump sum pending any of the Unlocated Beneficiaries providing proof of entitlement.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

**(e) Hawker Siddeley Canada Inc. Pension Plan for  
Salaried Employees, Registration Number  
344192**

Payment of surplus to Hawker Siddeley Canada Inc. ("Hawker") and CGTX Inc., from the Hawker Siddeley Canada Inc. Pension Plan for Salaried Employees, Registration Number 344192, in the amount of 50% of the surplus in the plan as of June 17, 1996 (\$39,761,785, after setting aside an amount of surplus for which a transfer may be requested to



Atchison Casting Corporation) plus 50% of the gains (net of losses) thereon to the date of payment less 50% of expenses and fees related to the wind up of the plan and distribution of the surplus assets. The Applicant's share of surplus is to be shared 90.47% to Hawker and 9.53% to CGTX Inc.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

Reasons for the decision on standing and the merits will follow separately.

#### **Pension Benefits Guarantee Fund (PGBF)**

#### **Declaration that the PGBF Applies to Pension Plans**

On January 28, 1999, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PGBF applies to the following pension plan:

#### **Revised Pension Plan for Employees of G.W. Martin Veneer Ltd. (Searchmount Division), Hourly Employees, Registration Number 414730**

#### **Allocations, subsection 34(7) of Regulation 909 under the PBA**

On January 28, 1999, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PGBF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PGBF.

#### **Revised Pension Plan for Employees of G.W. Martin**

#### **Veneer Ltd. (Searchmount Division), Hourly Employees, Registration Number 414730**

Allocate and pay an amount not to exceed \$340,900 to provide, together with the assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation.

#### **Commission Decisions - Applications February 17, 1999**

#### **Surplus Withdrawal on Plan Wind Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909, (as amended by O. Reg. 743/91) and s. 78(1) and 79(3) of the Act**

At the Commission meeting held February 17, 1999, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

#### **(a) Retirement Plan for Employees of The Mortgage Insurance Company of Canada, Registration Number 313395**

Payment of surplus to Mortgage Insurance Company of Canada from the Retirement Plan for Employees of The Mortgage Insurance Company of Canada, Registration Number 313395, in the amount of 65% of the Net Surplus estimated to be \$4,138,228 as at July 31, 1998 (total surplus in the plan estimated to be \$6,366,505) plus investment earnings thereon to the date of payment. The Net Surplus is the amount of surplus remaining on plan wind up after payment of all expenses and after provision for all benefits payable to members, former members and other persons entitled to benefits on plan wind up.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including





enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

**(b) Pension Plan for Salaried Employees of PFB Corporation, Registration Number 352690**

Payment of surplus to PFB Corporation from the Pension Plan for Salaried Employees of PFB Corporation, Registration Number 352690, in the amount of approximately \$988,446 as at December 31, 1996, the effective date of the wind up, less estimated wind up expenses of \$130,823. This amount will be adjusted for investment income and losses due to annuities purchased for members and changes in interest rates from the date of wind up to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

**Pension Benefits Guarantee Fund (PGBF)**

**Declaration that the PBGF Applies to Pension Plans**

On February 17, 1999, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies to the following pension plan:

**(a) Pension Plan for Employees of Glen L. Coulter Financial Services Ltd., Registration Number 486357**

Allocations, subsection 34(7) of Regulation 909 under the PBA

On February 17, 1999, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

**(a) Pension Plan for Employees of Glen L. Coulter Financial Services Ltd., Registration Number 486357**

Allocate and pay an amount not to exceed \$286,884 to provide, together with the assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation.



## Commission Decisions with Reasons

(Note: In this section, "Commission" refers to the Pension Commission of Ontario.)

**INDEX NO.:** XDEC-41

**PLAN:** Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851

**DATE OF DECISION:** September 9, 1998

**PUBLISHED:** FSCO Pension Bulletin 8/1 FSCO website.

**IN THE MATTER OF** the Pension Benefits Act,  
R.S.O. c. P.8 (the "Act");

**AND IN THE MATTER OF** the decision of the Superintendent of Pensions for Ontario dated January 13, 1997, with respect to the transfer of assets from the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 ( the "Pension Plan") to the St. Joseph's Health Centre Pension Plan, the Providence Centre Pension Plan, and the Morrow Park Plan ( the "New Plans");

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the Act.

### **BETWEEN:**

THE CANADIAN UNION OF PUBLIC  
EMPLOYEES, LOCALS No. 1144 and 1590 Applicant  
-and-  
SUPERINTENDENT OF PENSIONS,  
THE SISTERS OF ST. JOSEPH FOR THE DIOCESE  
OF TORONTO IN UPPER CANADA,  
ST. MICHAEL'S HOSPITAL, ST. JOSEPH'S HEALTH  
CENTRE and PROVIDENCE CENTRE  
Respondents

### **BEFORE:**

C.S. (Kit) Moore, Chair  
M. Elizabeth Greville, Member  
David E. Wires, Member

### **APPEARANCES:**

For the applicant:

Mr. M. Zigler  
Mr. R. Tomassini

For the Superintendent of Pensions:

Ms. D. McPhail

For the respondents:

Ms. F. Kristjanson  
Ms. R. Grant  
  
Mr. F. Stopar

### **HEARING DATE:**

July 27, 1998  
Toronto, Ontario

### **DECISION RELEASED:**

September 9, 1998



## REASONS FOR DECISION

### Nature of the Application

The Superintendent of Pensions for Ontario (the "Superintendent") refused to grant relief requested by the Canadian Union of Public Employees Locals No. 1144 and 1590 ("CUPE"), including a request by CUPE that the Superintendent issue an order under s. 87(1) of the Act that the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the "Pension Plan") and its successors constitute a multi-employer pension plan (a "MEPP"). In a letter written to the Superintendent and other interested parties, CUPE indicated its intention to appeal certain decisions of the Superintendent. Subsequently, a Request for Hearing under s. 89 of the Act was submitted to the Pension Commission of Ontario (the "Commission").

Following an initial pre-hearing conference and telephone conference call among the parties, a further pre-hearing conference was held at which a preliminary question arose as to whether the Commission had jurisdiction to conduct the hearing. The parties agreed to argue the issue of jurisdiction in advance of the merits. The Commission received written submissions on the matter, heard oral argument and advised the parties, by way of letter dated March 13, 1998, that it had determined that the Commission had jurisdiction to determine whether the pension plan is a MEPP under the Act. Written reasons were published in an amended decision released May 13, 1998 (the "May 13th Decision"). Where appropriate, reference is made to that decision in describing the background and reasoning for our subsequent decisions regarding the Commission's jurisdiction in these matters.

At the hearing on jurisdiction, the hearing panel was also asked to determine its jurisdiction in respect of four other issues relating to division of the Pension

Plan, transfer of assets, section 80 and section 81 of the Act. In a subsequent letter dated May 29, 1998, the Commission advised the parties that it did not then have jurisdiction to hold a hearing under s. 89 of the Act regarding any of these four issues. Written reasons were published in a decision released May 29, 1998.

At a further pre-hearing conference held June 15, 1998, the parties agreed that certain disclosure of documents requested by CUPE was contested and required a hearing before the full panel. This written decision sets out the results of that hearing.

### The Facts

Reference should be made to the May 13th Decision for certain facts set out in that decision.

### The Issue

In a written submission prepared for the initial pre-hearing conference held July 21, 1997, CUPE asked the Commission to order the respondents to disclose documents relating to 16 listed items.

Following that pre-hearing, the respondents agreed to disclose some of the requested documents, and CUPE reduced the extent of its request regarding some of the remaining documents. The respondents have refused to disclose the following documents requested by CUPE:

- (a) Operating Plans for each of the Hospitals for the years 1993/1994 and 1995/1996;
- (b) Any financial documents relating to the funding of the Hospitals by either the government or the Sisters and in the possession or control of either the Sisters or the Hospitals for the years 1992 to 1995;
- (c) Minutes of all meetings of the Sisters' Board of Directors relating to the operation and administration of the Plan from 1992 to



January 1, 1995;

- (d) Minutes of the Board meetings of St. Joseph's in connection with St. Joseph's participation in the Plan from 1992 to January 1, 1995;
- (e) Minutes of the Board meetings of Providence Centre in connection with Providence Centre's participation in the Plan from 1992 to January 1, 1995, and;
- (f) Minutes of the Board meetings of St. Michael's in connection with St. Michael's participation in the Plan from 1992 to January 1, 1995.

### Relevant Rules

Rule 4 of the Commission's Rules of Practice for Proceedings under Section 89 of the Act states that the Commission may order any party to provide to it or to any other party such particulars as are necessary for a satisfactory understanding of the issues in the proceeding. Sub-Rule 4.2(5) reads as follows:

4.2(5) The Commission may order a party to disclose in advance of the hearing any document or thing, other than privileged information, which is:

- (a) identified by the party requesting the order with reasonable specificity,
- and
- (b) relevant to the subject matter of the proceeding which may be admissible at the hearing.

### The Arguments

The respondents argue that the disclosure at issue lacks relevance and specificity, and object to the additional costs and time required to retrieve and copy the documents requested. In this regard, the hearing panel heard testimony from one witness, Sister Marcella

Iredale, who presented evidence regarding the confidential nature of the documents in question, and the amount of time required to delete portions of the minutes relating to members' personal issues and not relevant to these Commission proceedings.

CUPE argues that the documents requested are identified with reasonable specificity, and that the portions of the minutes requested are limited to those relevant to the Pension Plan and to the hospitals' organization and structure.

The Superintendent disputes the relevance or necessity of the additional disclosure, given the extensive disclosure already made. In the Superintendent's view, the Commission should order any documents containing confidential information to be sealed, as the most effective way of protecting confidentiality interests in this matter.

### Reasoning and Result

Regarding operating plans requested by CUPE, the hearing panel notes that such plans have already been disclosed for the fiscal year 1994/1995 for each hospital, and the panel was not made aware of any reason, other than inconvenience, for not providing operating plans for the other two years requested.

Additional financial documents relating to funding of the hospitals were also requested for the years 1992 - 1995. The hearing panel is of the opinion that any such documents relating to the matter in this proceeding should be disclosed to CUPE to allow them a satisfactory understanding of the issues.

Disclosure regarding both the operating plans and the relevant financial documents shall be treated as confidential by the parties.

Given the written and oral submissions of the respondents, and the evidence presented by the witness, the hearing panel recognizes that the minutes requested by CUPE may contain personal member





information not relevant to the hearing on the merits, and that considerable time will be required of Sister Marcella Iredale to delete those personal references before disclosing the minutes. Notwithstanding these concerns, the hearing panel is of the opinion that the relevant portions of such minutes should be disclosed to CUPE, in the interests of allowing a satisfactory understanding of the issues. Such information shall be treated as confidential by the parties and shall not be used for any purpose other than those of this proceeding, unless otherwise ordered by the Commission.

### **Order**

The Commission orders that all documents sought by CUPE and relevant to the issues to be determined in the hearing on the merits shall be disclosed by the respondents as requested by CUPE. The panel is sympathetic to the Sisters' concern regarding the confidentiality of certain documents, and would entertain written submissions regarding the sealing of any such documents when those documents are disclosed.

Such disclosure shall be made on or before September 30, 1998, to counsel for the other parties to this hearing, on the understanding that it shall not be used for any purposes other than those of this proceeding. All materials disclosed under this Order shall be treated as confidential unless otherwise ordered by the Commission.

Dated this 9th day of September, 1998 at the City of Toronto, Province of Ontario.

C.S. (Kit) Moore, Chair

M. Elizabeth Greville, Member

David E. Wires, Member



INDEX NO.: XDEC-42

PLAN: Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851

DATE OF DECISION: December 18, 1998

PUBLISHED: FSCO Pension Bulletin 8/1 FSCO website.

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IN THE MATTER OF the Pension Benefits Act,  
R.S.O. 1990, c. P.8 (the "Act");

AND IN THE MATTER OF the decision of the  
Superintendent of Pensions for Ontario (the  
"Superintendent") dated January 13, 1997, with  
respect to the transfer of assets from the Pension Plan  
for Hospital Employees of the Sisters of St. Joseph for  
the Diocese of Toronto in Upper Canada, Registration  
Number 302851 (the "Pension Plan") to the St.  
Joseph's Health Centre Pension Plan, the Providence  
Centre Pension Plan, and the Morrow Park Plan (the  
"New Plans");

AND IN THE MATTER OF a Hearing in  
accordance with subsection 89(8) of the Act.

BETWEEN:

THE CANADIAN UNION  
OF PUBLIC EMPLOYEES,  
LOCALS No. 1144 and 1590 ("CUPE")

Applicant  
-and-

SUPERINTENDENT OF PENSIONS, THE  
SISTERS OF ST. JOSEPH FOR THE DIOCESE  
OF TORONTO IN UPPER CANADA (the  
"Sisters"), ST. MICHAEL'S HOSPITAL,  
ST. JOSEPH'S HEALTH CENTRE and  
PROVIDENCE CENTRE (the "Hospitals")

Respondents

BEFORE: C.S. (Kit) Moore, Chair  
M. Elizabeth Greville, Member  
David E. Wires, Member

APPEARANCES:

For CUPE:

Mr. M. Zigler

Mr. R. Tomassini

For the Superintendent of Pensions:

Ms. D. McPhail

Ms. L. McDonald

For the Sisters and the Hospitals:

Ms. F. Kristjanson

Mr. A. Fanaki

Hearing Dates:

October 26, 27 and November 17, 1998

Toronto, Ontario

Decision Released:

December 18, 1998

Toronto, Ontario



## REASONS FOR DECISION

### Nature of the Application

The Superintendent of Pensions for Ontario (the "Superintendent") refused to grant relief requested by the Canadian Union of Public Employees Locals No. 1144 and 1590 ("CUPE"), including a request by CUPE that the Superintendent issue an order under s. 87(1) of the Act that the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the "Pension Plan") and its successors constitute a multi-employer pension plan (a "MEPP"). CUPE filed a Request for Hearing under s. 89 of the Act with the Pension Commission of Ontario (the "Commission") asking that the Commission declare the Pension Plan to be a MEPP subject to s. 8 (1)(e) of the Act, and requesting the Commission to make orders regarding: (i) the Pension Plan's administration under s. 8 (1) (e); (ii) the proposed transfer of assets to the Hospitals' New Plans; and (iii) the status of the New Plans. Following a hearing on the Commission's jurisdiction in these matters, the Commission determined that it had jurisdiction to determine whether the Pension Plan is a MEPP subject to s. 8 (1)(e) of the Act (the "MEPP issue") and declined to take jurisdiction of the other matters prior to determining the MEPP issue.

### The Facts

The following facts can be found in the Agreed Statement of Facts on Jurisdictional Issues provided to the hearing panel, on consent, at the hearing on jurisdiction.

Effective January 1, 1958, the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada (the "Sisters") established a pension plan for certain employees, and amended the plan from time to time.

In Article 1.20 of the Pension Plan, amended and

restated as at January 1, 1992, "employee" is defined as meaning "any employee who is employed on a full-time or less than full-time basis at an Hospital", but not meaning "any person who is a casual or temporary employee of the Hospital or who is remunerated under contract for special services or on a fee for service basis".

"Employer" is defined in Article 1.21 of the Pension Plan as meaning "for the purposes of this Plan only, the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada in its personal capacity as employer with respect to the Hospitals".

"Hospital" is defined in Article 1.23 of the Plan as follows: "Hospital" means with respect to an Employee either Fort Bonne Association of Ontario, St. Joseph's Health Centre, St. Michael's Hospital, Providence Centre (formerly Providence Villa and Hospital) or the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada with respect to the employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada whose duties relate to the aforementioned hospitals plus any other health facility of the Sisters of St. Joseph as designated by the Sisters of St. Joseph from time to time.

The term "administrator" is defined in Article 1.03 of the Plan as meaning "the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada in its capacity as administrator under the Pension Benefits Act and Income Tax Act".

In 1994, the Commission received a letter written on behalf of the Sisters, stating that St. Joseph's Health Centre and Providence Centre would be separately incorporated on January 1, 1995, that the Sisters' plan would be split as of that date so that two new plans would apply to the two new corporations, and that St. Michael's Hospital would be incorporated on January 1, 1996, at which time the Sisters' plan would become the St. Michael's Hospital Plan. On December 6, 1994, the Sisters sent letters to Pension Plan



participants, informing them of the Sister's intent to incorporate Providence Centre and St. Joseph's Health Centre on December 31, 1994 and to incorporate St. Michael's Hospital a year later.

The Sisters amended and restated its plan as at January 1, 1995. The Preamble to the amended and restated plan states in part:

Effective January 1, 1995, all assets and liabilities with respect to the employees or former employees of the St. Joseph's Health Centre and the employees or former employees of Providence Centre, who were Members or the Spouses, former Spouses, Beneficiaries, Dependent Children or joint annuitants of former Members entitled to benefits pursuant to the terms of the Plan as of December 31, 1994, subject to regulatory approval, will be transferred to the St. Joseph's Health Centre Pension Plan and the Providence Centre Pension Plan, respectively.

During 1996, the Superintendent received submissions written on behalf of CUPE, opposing the Sisters' splitting of the Pension Plan and transfer of assets. The Superintendent also received written submissions made on behalf of the Sisters, responding to the submissions made on behalf of CUPE.

On January 13, 1997, the Superintendent wrote to CUPE's legal counsel refusing to grant the relief requested in CUPE's submissions. In particular, the Superintendent refused to issue an order under s. 87(1) that the Pension Plan and any of its successors constitute a MEPP established pursuant to a collective agreement or a trust agreement within the meaning of s. 8(1)(e) of the Act. On the same day, the Superintendent consented to transfers of assets from the Pension Plan to the St. Joseph's Health Centre Plan and to the Providence Centre Plan.

On January 27, 1997, on CUPE's behalf, letters were sent to the Superintendent and to counsel for the

Sisters stating that CUPE intended to appeal the Superintendent's decisions dated January 13, 1997 and requesting that transfers of assets be held in abeyance pending the outcome of the appeal.

On February 11, 1997, a Request for Hearing Under Section 89 of the Act was submitted to the Commission on CUPE's behalf.

### **Preliminary Matters**

Following an initial pre-hearing conference and telephone conference call among the parties, a further pre-hearing conference was held at which a preliminary question arose as to whether the Commission had jurisdiction to conduct the hearing. The parties agreed to argue the issue of jurisdiction in advance of the merits. The Commission received written submissions on the matter, heard oral argument and advised the parties, by letter dated March 13, 1998, that it had determined that the Commission had jurisdiction to determine whether the pension plan is a MEPP under the Act. Written reasons were published in a decision released April 24, 1998 and amended May 13, 1998.

At the hearing on jurisdiction, the hearing panel was also asked to determine its jurisdiction in respect of four other issues relating to division of the Pension Plan, transfer of assets, section 80 and section 81 of the Act. In a subsequent letter dated May 29, 1998, the Commission advised the parties that it did not then have jurisdiction to hold a hearing under s. 89 of the Act regarding any of these four issues. Written reasons were published in a decision released May 29, 1998.

At a further pre-hearing conference held June 15, 1998, the parties agreed that disclosure of certain documents requested by CUPE was contested. A hearing into the disclosure was held on July 27, 1998 before the full panel. The Commission received written submissions, heard oral argument, and advised the parties by letter that all documents sought by





CUPE and relevant to the issues to be determined in the hearing on the MEPP issue were to be disclosed by the Sisters as requested by CUPE, on a confidential basis. Written reasons were published in a decision released September 9, 1998.

### The Issue

Was the Pension Plan a multi-employer pension plan (a "MEPP") within the meaning of the Act, and therefore required to be administered in accordance with s. 8 (1)(e) of the Act?

### The Relevant Legislation

In the Act, Section 1 includes the following definitions:

1.--"employer", in relation to a member or a former member of a pension plan, means the person or persons from whom or the organization from which the member or former member receives or received remuneration to which the pension plan is related,

1.--"multi-employer pension plan" means a pension plan established and maintained for employees of two or more employers who contribute or on whose behalf contributions are made to a pension fund by reason of agreement, statute or municipal by-law to provide a pension benefit that is determined by service with one or more of the employers, but does not include a pension plan where all the employers are affiliates within the meaning of the Business Corporations Act.

Other relevant excerpts from the Act follow:

8.--(1) A pension plan is not eligible for registration unless it is administered by an administrator who is,...

(e) if the pension plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement,

a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan of whom at least one-half are representatives of members of the multi-employer pension plan, and a majority of such representatives of the members shall be Canadian citizens or landed immigrants;

87.--(1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 89 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund.

(2) The Superintendent may make an order under this section if the Superintendent is of the opinion, upon reasonable and probable grounds,

(a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;

(b) that the pension plan does not comply with this Act and the regulations; or

(c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.

89.--(1) Where the Superintendent proposes to refuse to register a pension plan or an amendment to a pension plan or to revoke a registration, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant or administrator of the plan.

(2) Where the Superintendent proposes to make an order under,...

(e) section 87 (administration of pension



plan in contravention of Act or regulation),

the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and on any other person to whom the Superintendent proposes to direct the order.

...

(6) A notice under subsection (1), (2), (3), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Commission if the person delivers to the Commission, within thirty days after service of the notice under that subsection, notice in writing requiring a hearing, and the person may so require such a hearing.

94.(4) The Superintendent shall exercise the powers and perform the duties that are vested in or imposed upon the Superintendent by this Act, the regulations and the Commission.

96. It is the duty of the Commission,

(a) to administer this Act and the regulations;

...

## The Arguments

CUPE argues that the Pension Plan meets the definition of a MEPP under s.1 of the Act and so must be administered in accordance with s. 8 (1)(e) of the Act. Its argument may be summarized as follows:

1. Before incorporation, the Hospitals operated as divisions and unincorporated entities. Each Hospital viewed itself as a separate organization and was viewed as such under other statutes. Each Hospital described itself in organizational terms, and each had a Board supervising and overseeing its business operations. In addition to

a Board, each Hospital had all the trappings of a separate corporation, including an audited financial statement, chief executive officer, other signing officers, and a by-law.

2. Pension Plan annual reports identified the Hospitals as contributing employers, and Pension Plan text wording was ambiguous in this regard. Collective agreements were concluded separately by each Hospital and required Hospital employees to participate in the Pension Plan. Employee payroll stubs and income tax forms showed the Hospitals, not the Sisters, as employers. Since 1959, the Sisters made little or no financial contribution to cover Hospitals' costs, which are largely government funded.
3. CUPE argues that each Hospital, on a broad and purposive interpretation of the Act, falls within the definition of "employer", which includes reference to "...the person or persons from whom or the organization from which the member or former member receives or received remuneration to which the pension plan is related...". CUPE also argues that the Pension Plan is not a "...plan where all the employers are affiliates within the meaning of the *Business Corporations Act*", and therefore is not excluded from the Act's definition of "multi-employer pension plan".

The Respondent Sisters and Hospitals argue that the Pension Plan does not meet the definition of a MEPP under s.1 of the Act, and that in any event it should not be administered in accordance with s. 8 (1)(e) of the Act. Their arguments are summarized below:

1. The Sisters owned and operated all bank accounts from which the Hospitals' payroll and benefit costs were met, in the business names of the Hospitals, and government funding was deposited into the Sisters' bank accounts. Although the Sisters nominated signing officers at each Hospital, no Hospital had authority to borrow or



to operate those bank accounts. The requirement of the Public Hospitals Act that a hospital be governed and managed by a board did not confer separate legal existence on the Hospitals, nor did it disregard the Sisters as owner.

2. Prior to the Hospitals' incorporation, the Hospitals were business divisions of the Sisters. The only employer, the only source of remuneration to Hospital employees, was the Sisters. In addition, there was no agreement, statute or municipal by-law requiring any person or organization other than the Sisters to contribute to the Pension Plan.
3. Where a "person" is the employer (as was the Sisters), then the full meaning of "person" in the Act's definition of employer should be accorded and the enquiry should be at an end. Use of the term "organization" in this definition is not intended to confer separate legal status to divisions of persons.
4. If, in the alternative, the Commission were to find that the Sisters was not the sole employer, then on a purposive interpretation of the Act, the Hospitals would be affiliates, as each Hospital is controlled by the same person, the Sisters.
5. Finally, if the Commission were to find the Pension Plan to be a MEPP within the meaning of s.1 of the Act, the Respondent Sisters and Hospitals argue that it was not originally established "pursuant to a collective agreement or a trust agreement" and therefore would not be subject to s. 8(1)(e).

For many of the same reasons put forward by the other Respondents, the Superintendent also argued that the Sisters was the only source of Pension Plan members' remuneration and the only employer required to contribute to the Pension Plan, with the result that the Pension Plan was not a MEPP. The

Superintendent added that, in the alternative, the Sisters owned and controlled the Hospitals, which meant that the Hospitals were affiliates of the Sisters, and the Pension Plan was not a MEPP.

### **Laches and Delay**

The Respondent Sisters and Hospitals also argued that CUPE's delay in requesting this hearing, and the resulting prejudice to the Sisters, should cause the Commission to give effect to the equitable doctrine of laches, and refuse to grant any relief requested by CUPE in this matter.

CUPE argued that efforts had been made during the past ten years to deal with the MEPP issue; for example, when discussions were held with the Sisters regarding amalgamation of the Pension Plan with the Hospitals of Ontario Pension Plan ("HOOPP"). Reference to those discussions was noted in the minutes of the Sisters' General Council meeting of November 19, 1992.

Given the significance of the MEPP issue, the lack of specific authority in the Act to consider a delay of this nature, and the time required for CUPE to deal fully with the HOOPP discussions, the hearing panel did not find that the delay warranted a refusal to consider the MEPP issue. In the panel's view laches is not covered by s.113 of the Act.

### **Reasoning and Result**

In deciding the MEPP issue, the hearing panel must first determine whether the Pension Plan meets the Act's definition of a MEPP. In doing so, the panel must address the following three questions:

- (1) Was the Pension Plan established and maintained for two or more employers?
- (2) Were contributions made to a pension fund, by those employers or on their behalf, by reason of agreement, statute or municipal by-law?



- (3) Were the employers affiliates within the meaning of the *Business Corporations Act*?

If the panel were to conclude that the answers to questions (1) and (2) are "yes" and the answer to question (3) is "no", the plan would be a MEPP. The panel must then determine whether the MEPP is subject to s. 8(1)(e) of the Act, which requires the MEPP to be "established pursuant to a collective agreement or a trust agreement".

- (1) Was the Pension Plan established and maintained for two or more employers?

In its argument that the Hospitals are separate employers, CUPE stresses the perception given to employees that the Hospitals are separate organizations responsible for pension plan management and other employment-related activities. For example, the panel heard evidence from CUPE representatives that collective bargaining matters were addressed directly by Hospital personnel. Reference was also made to Pension Plan Annual Reports and Hospital planning documents referring to the Hospitals as Pension Plan contributors and separate organizations. CUPE also noted that pay stubs and T4 income tax forms showed the Hospitals, not the Sisters, as employers, and that day-to-day banking transactions were carried out by the Hospitals.

On the other hand, these same CUPE representatives gave evidence that they had little or no knowledge of the Sisters' role in Hospital employment matters, nor did any of those witnesses deal directly with the Sisters on these matters. With these two facts in mind, it is not surprising that these witnesses viewed the Hospitals as employers.

When the panel heard from witnesses who were familiar with the Sisters' relationship to the

Hospitals, or who were directly involved in the Sisters' operations, a quite different picture began to emerge. For example, the Sisters owned and operated the bank accounts, in the business names of the Hospitals, and appointed signing officers through banking resolutions passed by the Sisters. All Ministry of Health funding pursuant to the *Public Hospitals Act* was deposited to these bank accounts, and all payroll and benefit costs were paid from them.

While Hospital names were shown on pay stubs and T4 forms, there is no question in the minds of the hearing panel that employees' remuneration, to which pension benefits were related, was paid from bank accounts under the control of the Sisters. The Sisters also appointed the auditors for Hospital financial statements, approved appointments of Hospital Board members and other senior officers, and approved Hospital by-laws. Not only did the Sisters own the property used in the operation of the Hospitals, but evidence was also given that assets of one Hospital were available to the Sisters to satisfy the debt of another Hospital.

In the panel's view, none of the three Hospitals controlled bank accounts from which employees remuneration was paid, with the result that none of the Hospitals could be considered employers as defined in the Act. Instead, the Hospitals were functioning as business divisions of a single employer, the Sisters, which had retained the powers to own and operate each of the Hospitals.

As a result, the panel concludes that prior to incorporation of the Hospitals, the Pension Plan was established and maintained for employees of only one employer, the Sisters.

- (2) Were Pension Plan contributions required to be made to the pension fund by more than one employer by reason of agreement, statute or





municipal by-law?

Having determined that, prior to the Hospitals' incorporation, only one employer, the Sisters, existed for purposes of the Pension Plan, the panel then directed its attention to the question of whether contributions were required from more than one employer by reason of any agreement, statute or municipal by-law. The hearing panel was presented with no evidence that Pension Plan contributions were made by reason of statute or municipal by-law.

Was there an agreement under which contributions to the Pension Plan were required from more than one employer? The Sisters first established the Pension Plan effective January 1, 1958 through a group annuity contract with the Canada Life Assurance Company, which identified only the Sisters as the employer contributing to the Pension Plan. The group annuity makes no reference to Hospitals contributing to the Pension Plan. A trust agreement made March 31, 1975 between National Trust Company and the Sisters provided for "pension contributions on account of its said hospital employees" to be received by the trustee. This trust agreement makes no reference to Hospitals contributing to the Pension Plan.

The collective agreements for CUPE members require participation in the Pension Plan, but no reference is made to the amount of any contributions, how those contributions are made, or who makes them.

The Pension Plan text contains the following definitions:

1.20 "Employee" means any employee who is employed on a full-time or less than full-time basis at an Hospital. ....

1.21 "Employer" means for purposes of this Plan only, the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada in its personal capacity as employer with respect to the Hospitals.

The "Contributions" section of the Pension Plan, in addition to requiring Employees to contribute, states that:

3.02 "The Employer shall pay into the Pension Fund.....in such amounts and at such times as the Sisters of St. Joseph shall determine."  
.....

While the Pension Plan text contains some ambiguous wording, the Employer is clearly defined as the Sisters and it is only the Sisters and the Employees that are required to contribute to the Pension Plan.

As a result, the panel concluded that the Sisters was the only employer required to contribute to the Pension Plan by reason of agreement, statute or municipal by-law.

### **(3) Were the employers affiliates within the meaning of the *Business Corporation Act*?**

Given the panel's finding that the Sisters was the only employer contributing to the Pension Plan, and the only employer required to contribute to the Pension Plan, there is no need to address this third aspect of the MEPP definition.



## CONCLUSION

For these reasons, the hearing panel finds that the Pension Plan did not meet the definition of a MEPP under the Act, and therefore is not subject to the requirements of s. 8 (1)(e) of the Act.

Dated this 18th day of December, 1998 at the City of North York, Province of Ontario.

C.S. (Kit) Moore, Chair

M. Elizabeth Greville, Member

David E. Wires, Member



INDEX NO.: XDEC-43

PLAN: Hawker Siddeley Canada Inc. Pension Plan for Salaried Employees, Registration Number 0344192

DATE OF DECISION: February 17, 1999

PUBLISHED: FSCO Pension Bulletin 8/1 and FSCO website

IN THE MATTER OF the Pension Benefits Act,  
R.S.O. 1990, c. P.8 (the "Act");

AND IN THE MATTER OF a hearing held by the  
Pension Commission of Ontario (the "Commission")  
to consider an application for the Commission's  
consent to a payment of surplus to Hawker Siddeley  
Canada Inc. and CGTX INC. from the Hawker  
Siddeley Canada Inc. Pension Plan for Salaried  
Employees, Registration Number 0344192 (the  
"Plan"), such application made pursuant to subsection  
78(1) of the Act and paragraph 8(1)(b) of Regulation  
909, R.R.O. 1990 (the "Regulation").

**PARTIES:**

HAWKER SIDDELEY CANADA INC.  
("Hawker")

Applicant

and

CONSULTATIVE COMMITTEE, COMPRISED  
OF SIX INDIVIDUALS DRAWN FROM AN  
ENTITLEMENT GROUP OF PLAN MEMBERS,  
FORMER MEMBERS, ANNUITIZED MEMBERS  
AND THEIR BENEFICIARIES  
(the "Consultative Committee")

and

THIRTEEN ANNUITIZED MEMBERS FROM  
THE RETIREMENT PENSION PLAN FOR  
HOURLY PAID EMPLOYEES OF CANADIAN  
CAR DIVISION, FORT WILLIAM PLANT  
(the "13 Annuitants")

**BEFORE:**

Mr. C.S. (Kit) Moore, Chair  
Mr. William M. Forbes, Member  
Ms. Judith Robinson, Member  
Ms. Joyce A. Stephenson, Member  
Mr. David E. Wires, Member

**APPEARANCES:**

For Hawker:  
Mr. J. Galway  
Ms. C. L. Helbronner

For the Consultative Committee:  
Mr. S. Weir

For the 13 Annuitants:  
Mr. L. Gottheil

**HEARING DATES:**

December 10, 1998 and January 28, 1999  
North York, Ontario



## DECISION RELEASED:

February 17, 1999

## REASONS FOR DECISION

### Nature of the Application

On August 21, 1998, the Commission received an application for its consent pursuant to subsection 78(1) of the Act and paragraph 8(1)(b) of the Regulation to a payment of surplus from the Hawker Siddeley Canada Inc. Pension Plan for Salaried Employees (the "Plan") to Hawker Siddeley Canada Inc. ("Hawker") and CGTX INC. ("CGTX"), the other participating employer under the Plan on its wind-up date of June 17, 1996.

The application was made pursuant to a surplus sharing agreement under which surplus of \$39,761,785 at June 17, 1996 plus gains (net of losses) to the date of payment less certain expenses and fees relating to the wind-up of the Plan and distribution of surplus assets would be shared 50% with an Entitlement Group of approximately 2300 Plan members, former members, annuitants and beneficiaries (the "Entitlement Group"), as set out in the surplus sharing agreement. The remaining 50%, or \$19,880,892, would be shared between Hawker (90.47%, or \$17,986,540) and CGTX (9.53%, or \$1,894,352) and adjusted in the same way for net gains and losses, expenses and fees. The total surplus of \$39,761,785 at June 17, 1996 was determined after setting aside an amount in respect of a proposed transfer of assets to a Quebec-registered pension plan for 26 former members of the Plan.

The application was first considered by the Commission at its meeting of December 10, 1998, at which counsel for CAW-Canada requested standing for CAW-Canada and its Local 1075, and for certain annuitants included in the surplus sharing agreement. Earlier written submissions had been made regarding

these matters of standing and the merits of the application. To allow the Commission time to review all written submissions, and to allow opportunity for further written submissions to be made, the Commission adjourned hearing of the application to its next scheduled meeting, on January 28, 1999.

### Additional Background

Objections to the application concerned the circumstances of a transfer of assets and liabilities into the Plan from the Pension Plan for Hourly Paid Employees of Canadian Car Div., Fort William Plant, Registration Number C-6336 (the "Hourly Plan"), which was merged with the Plan effective January 1, 1986. On January 3, 1984, Hawker had sold the assets of its Canadian Car Division to Can-Car Rail Inc., which had established a pension plan to which Hourly Plan liabilities and a pro-rata share of assets were transferred for Hourly Plan members continuing employment with Can-Car Rail Inc. Pension entitlements for a group of other Hourly Plan members were annuitized and in a small number of cases were included in the Hourly Plan liabilities as deferred vested pensions. In Hawker's application for surplus withdrawal, the Entitlement Group included 182 surviving individuals whose entitlements could be traced back to the Hourly Plan, of which 178 were annuitants and 4 were deferred vested members, and of which 133 (73%) consented to the surplus sharing agreement. The 13 Annuitants raising objections were among the members of the Hourly Plan whose pensions were annuitized prior to 1986.

The CAW-Canada and its Local 1075 (the "CAW") is the successor trade union to the International Union, United Automobile, Aerospace and Agricultural Implement Workers Union - UAW and its Local 1075 (the "UAW"), which represented all members of the Hourly Plan and had a number of collective agreements with the Canadian Car Division of Hawker. The last of these agreements was effective





June 1, 1982 to May 31, 1984 and included reference to the Hourly Plan, in the following terms:

“Article 48 - Pension Plan The non-contributory pension plan instituted January 1st, 1963, and as amended at negotiations is supplemental to this agreement.”

## The Relevant Legislation

The following subsections of the Act are of particular relevance:

78.--(1) No money may be paid out of a pension fund to the employer without the prior consent of the Commission.

79. --(3) The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless,

- (a) the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus;
- (b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan;
- (c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of termination of the pension plan; and
- (d) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus money out of a pension fund.

Clause 8(1)(b) of the Regulation, which precludes payment out of surplus to an employer unless certain consent requirements have been met, reads as follows:

8.(1) No payment may be made from surplus out of a pension plan that is being wound up in whole

or in part unless,...

- (b) the payment is to be made to an employer with the written agreement of,
  - (i) the employer,
  - (ii) the collective bargaining agent of the members of the plan or, if there is no collective bargaining agent, at least two-thirds of the members of the plan, and
  - (iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind up as the Commission considers appropriate in the circumstances.

## Preliminary Issue Regarding Standing

The Commission first decided on a request for the CAW and the 13 Annuitants to be given standing at the hearing on the merits of Hawker's application.

The request for CAW standing was made with respect to the interests of former members and annuitants whose entitlements could be traced back to the Hourly Plan. The CAW has no collective bargaining agreement covering members of the Plan, nor does the CAW purport to represent their interests in this matter. As a result, in accordance with the Commission's position on *Pension Plan for Employees of the Corporation of the City of Etobicoke*, October 4, 1997, XDEC-36 (PCO BBS - November 4, 1997), the CAW is not required to consent pursuant to clause 8(1)(b) of the Regulation and, in the Commission's view, does not have a genuine interest in the matter. In the circumstances of this case, the Commission declined to give standing to the CAW.

Hawker argued that, in accordance with the Commission's policy that annuitants are not included



in the former member consent group unless annuitized shortly before the date of wind-up, as confirmed in *Ferro Canadian Employees' Pension Plan*, December 19, 1995 XDEC-32 (PCO Bulletin 6/4, Fall-Winter 1997, p.75), the 13 Annuitants should also be denied standing. The Commission disagreed, given that Hawker had included the 13 Annuitants in the Entitlement Group, offered them a share of surplus, and asked for their consent to the surplus sharing agreement. In spite of significant representation provided to the Entitlement Group through the Consultative Committee and its legal and actuarial advisors, the 13 Annuitants argued that the Consultative Committee included no representation from the Hourly Plan, and that significant issues needed to be addressed at the hearing regarding treatment of Hourly Plan assets and liabilities. The Commission determined that the 13 Annuitants should be given standing at the hearing on the merits.

### Does the Application Meet the Requirements of the Act?

For the Commission to approve Hawker's application as required by subsection 78(1) of the Act, the application must comply with subsection 79(3) of the Act and clause 8(1)(b) of the Regulation to the Commission's satisfaction. The Commission is also mindful of its policy, as expressed in the following paragraph from *United Dominion Industries Limited*, March 24, 1994, XDEC-20 (PCO Bulletin 5/2-Summer 1994) ("*United Dominion*"), to take certain factors into account when determining the level of scrutiny to be given to prior plan documentation:

"How, then, is the approach of the Commission different when dealing with applications under Regulation 909? As we said in the *Western Star* decision referred to above, the degree of scrutiny that the Commission will apply to plan documentation when determining if the requirements of the Clause have been met will

vary from case to case. In this case, members and former members had separate legal representation, the requisite number of consents have been obtained as required by clause 8(1)(b) and all other legislative and policy requirements have been met. As well, the Commission was keenly aware of the other relevant facts, set out above in the section entitled "Consents", which relate to the size of the population opposing the application and surplus sharing agreement, the percentage of Plan members that had died pending resolution of the application and the age distribution of the remaining inactive Plan members. In light of all these factors, the Commission did not scrutinize the plan documentation as stringently as it would have under the old regulation nor, indeed, as it would absent one or more of those facts."

In the case of Hawker's application and the related surplus sharing agreement, most of these factors are present, as noted in the following points:

1. Notice Requirements - In the Commission's view, the notice met the requirements of the Act and Regulation, and in particular included relevant prior documentation for the Hourly Plan. The Commission also notes that Commission staff reviewed the notice and included the following comment in a memorandum dated December 2, 1998:

"Staff have reviewed the notice and are of the opinion that the contents of the notice satisfied the requirements of the regulations and the Commission's administrative practices regarding contents."

2. Separate Legal Representation - Members of the Entitlement Group were offered the opportunity to obtain individual legal advice through the Consultative Committee's counsel, Borden & Elliot, and Hawker agreed that reasonable costs of such advice would be paid for out of the Plan.



3. Consents - The requisite number of informed consents were obtained and a relatively high percentage (88%) of the Entitlement Group consented, as summarized in the following table taken from Hawker's application, showing notices and consents as at August 19, 1998:

	Notices Issued	Written Consents	Percentage Consenting
Active Members	309	285	92.2%
Former Members	348	243	69.8%
Partial Wind-Up Members	225	210	93.3%
Annuitants	1357	1234	90.9%

4. Age Distribution - The Commission takes note of Hawker's statement that it was under no legal obligation to include annuitants, but had voluntarily chosen to do so to make its surplus sharing proposal as broadly based as possible, in an effort to avoid protracted proceedings that would delay access to surplus for the employers and for members of the Entitlement Group. In this regard, Hawker states that approximately 65% of the Entitlement Group is over the age of 65 and approximately 45% of the Entitlement Group is over the age of 75.

5. Opposition to the Application - The 13 Annuitytants opposing Hawker's application represent approximately 1% of the annuitized members, or approximately 0.6% of total membership, in the Entitlement Group. As noted above, a high percentage (88%) of members of the Entitlement Group have consented to the surplus sharing agreement.

In the Commission's view, these factors may allow the Commission to give a lower level of scrutiny to prior plan documentation than would otherwise be the case.

Nevertheless, the Commission has been asked to address specific questions regarding prior plan documents for the Hourly Plan, and must consider those questions before deciding on the application. In this regard, the Commission's views are set out below.

**Prior Documentation Relating to the Hourly Plan**

Written submissions from the 13 Annuitytants raised questions concerning prior documentation for the Hourly Plan, and in particular requested that the Commission address the following two issues before deciding on the application:

- (a) the validity of an amendment made in 1971 to Article Twelfth of the 1963 trust agreement (the "1971 Amendment"); and
- (b) the meaning and scope of the 1971 Amendment.

The 1963 trust agreement, which was the original trust agreement for the Hourly Plan, included the following exclusive benefit language in Article Third:

"THIRD: Anything contained in this Agreement to the contrary notwithstanding, no part of the Trust Fund (other than such part as is required to pay taxes and administrative fees and expenses) shall be used for, or diverted to, purposes other than for the exclusive benefit of the employee members of the Plan or their beneficiaries".

Article Thirteenth provides for termination of the trust and agreement, but makes payment of the Trust Fund subject to Article Third:

"THIRTEENTH: This trust and agreement may be terminated at any time by the Company and upon such termination or upon the dissolution or liquidation of the Company, the Trust Fund shall be paid out by the Trustee as directed by the Company subject to the



provisions of Article THIRD thereof.”

The following relevant excerpt from the original wording of Article Twelfth describes the power of amendment originally contained in the 1963 trust agreement. This wording does not include reference to the exclusive benefit language of Article Third, but does require that amendments not permit trust funds to be used for purposes other than those specified in the Hourly Plan.

“TWELFTH: This Agreement...may be amended or modified at any time by the Company, provided that no such amendment or modification shall increase the duties or obligations of the Trustee without its consent and provided further that no such amendment or modification shall authorize or permit any part of the Trust Fund to be used for, or diverted to, purposes other than those specified in the Plan. Any such amendment or modification shall be by a written instrument which shall be delivered to the Trustee.”

The 1971 Amendment added the following relevant clauses to Article Twelfth:

“TWELFTH: Notwithstanding anything herein contained:

...

- (ii) in the event of the consolidation or merger of the Plan with or into any other pension plan established by the Company, the Company may direct the Trustee in writing to transfer the assets of the Trust Fund to any pension fund or funds established for the purpose of providing the pension and other benefits under the pension plan resulting from such consolidation or merger and in such event the Trustee shall forthwith transfer

all of the assets in the Trust Fund to such pension fund or funds and such assets shall thereafter no longer constitute a part of the Trust Fund; provided that any such consolidation or merger shall be carried out on such terms as not to impair the pension and other benefits to which the members or pensioners are entitled under the Plan as at the effective date of such consolidation or merger;

...

- (v) in the event that at any time the assets in the Trust Fund together with the assets in all other pension funds established under the Plan shall exceed the amount required to provide the pension and other benefits to which the members are entitled under the Plan at such time, the Company may direct the Trustee in writing to transfer to a pension fund or funds established under any other pension plan of the Company or of any subsidiary or associated company, all or any portion of the excess assets and in such event the Trustee shall forthwith make such transfer and the assets so transferred shall thereafter no longer constitute a part of the Trust Fund.

The Trustee shall be under no liability for any transfer of assets made by it in accordance with the written direction of the Company as aforesaid.”

- (a) Validity of the 1971 Amendment - In submissions regarding the validity of the 1971 Amendment, the 13 Annuitants highlighted the broad exclusive benefit language of Article Third of the 1963 trust agreement, and also noted that the original amending power of the 1963 trust agreement would not permit trust funds to





be used for purposes other than those specified in the Hourly Plan. Hawker submitted that the exclusive benefit language of Article Third was not so broad as to encompass the amending power of Article Twelfth. In support of this position, Hawker noted that the termination provision (Article Thirteenth) of the 1963 trust agreement was explicitly made subject to the provisions of Article Third, whereas the amending provision (Article Twelfth) was not. Both the 1963 pension plan text and trust agreement were silent on treatment of surplus assets.

The 1971 Amendment included amendments to the wording of Articles Third and Twelfth that provided an explicit exemption of Article Twelfth from the application of Article Third. The Commission was unable to determine conclusively whether or not this was the original intent of the 1963 documents, but was swayed by the argument that Article Twelfth was not intended to be subject to the exclusive benefit language of Article Third. This view is consistent with the position taken by Commission staff when the 1971 Amendment was submitted for registration and subsequently approved.

The Commission was presented with no documents indicating that the union had viewed the 1971 Amendment during their period of collective bargaining with Hawker, but notes that the collective bargaining agreements did include specific reference to the pension plan, and the union would have been expected to be aware of the 1971 Amendment, if not in 1971 then during the subsequent 13 years when collective agreements were made with Hawker. While the collective bargaining agreements referred only to the “non-contributory pension plan instituted at January 1st, 1963, and as amended at negotiations”, there is no question in the Commission’s view that the trust agreement and pension plan are linked to some degree and that members or their representatives would be expected to keep themselves informed of the status of both

aspects of their pension arrangements.

The Commission also noted that a detailed legal review of prior plan documents was carried out by legal counsel for the Consultative Committee representing members of the Entitlement Group, including those individuals whose annuities arose from pension entitlements under the Hourly Plan.

The Commission therefore takes the view that the 1971 Amendment was a valid amendment to the 1963 trust agreement.

(b) Meaning & Scope of the 1971 Amendment - The 13 Annuitants also raised issues regarding the meaning and scope of the 1971 Amendment, in particular the provision that a merger “shall be carried out on such terms as not to impair the pension and other benefits” to which members are then entitled, and the provision giving employers direction over transfers of surplus assets to other funds. More specifically, the 13 Annuitants submitted that “other benefits” should include rights to surplus funds whether or not yet crystallized.

In the Commission’s view, the Supreme Court of Canada’s decision in *Schmidt v. Air Products* (1994), 115 D.L.R. (4th) 631(S.C.C.) would support the position that only those benefits crystallized at the time of the event (in this case, the merger) would come under the definition of “other benefits” here. The Hourly Plan did not develop surplus assets until Hourly Plan members’ pensions were annuitized, which was not effected until after the 1984 merger took effect. As a result, the Commission has no reason to believe that the 1984 merger impaired pensions and other benefits of Hourly Plan members and pensioners. In fact, the surviving individuals from this group have been included in the Entitlement Group relating to the Hawker application to withdraw surplus from the Plan.



## CONCLUSION

For these reasons, the Commission gave its consent pursuant to subsection 78(1) of the Act and clause 8(1)(b) of the Regulation, to a payment of surplus to Hawker and CGTX, from the Hawker Siddeley Canada Inc. Pension Plan for Salaried Employees, Registration Number 344192, in the amount of 50% of the surplus in the Plan as of June 17, 1996 (\$39,761,785, after setting aside an amount of surplus for which a transfer may be requested) plus 50% of the gains (net of losses) thereon to the date of payment less 50% of expenses and fees related to the wind up of the plan and distribution of the surplus assets.

This consent shall not be effective until Hawker satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

Dated this 17th day of February, 1999 at the City of North York, Province of Ontario.

C.S. (Kit) Moore, Chair

William M. Forbes, Member

Judith Robinson, Member

Joyce A. Stephenson, Member

David E. Wires, Member



## Financial Services Tribunal Decision with Reasons

*(Note: only those FST decisions pertaining to pensions are included in this section)*

**SECTION:** Financial Services Tribunal Decision

**INDEX NO.:** FST Decision #2 (FST File No. P0015)

**TITLE:** Retirement Plan for Salaried Employees of Cooper Canada  
- Plan A, Registration Number 240622

**APPROVED BY:** Financial Services Tribunal

**PUBLISHED:** FSCO Bulletin and Internet

**IN THE MATTER** of the Pension Benefits Act,  
R.S.O. 1990, c. P.8, as amended by the Financial  
Services Commission of Ontario Act, 1997, S.O. 1997,  
c.28 ("the Act");

**AND IN THE MATTER** of a proposal of the  
Superintendent of Financial Services to make an order  
requiring the wind up in part of the Retirement Plan  
for Salaried Employees of Cooper Canada - Plan A,  
Registration Number 240622 (the "Pension Plan");

**AND IN THE MATTER** of a request for a hearing  
by the Financial Services Tribunal (the "Tribunal") in  
accordance with subsection 89(6) of the Act (the  
"Hearing Request");

**AND IN THE MATTER** of an application for an  
award of costs, in connection with the Hearing  
Request, made by certain members and former  
members of the Pension Plan;

**BETWEEN:**

COOPER INDUSTRIES (CANADA) INC.,  
("Cooper") Applicant  
-and-

SUPERINTENDENT OF FINANCIAL SERVICES  
(the "Superintendent")  
-and-  
THIRTY-SIX MEMBERS AND FORMER MEMBERS  
of  
THE RETIREMENT PLAN FOR SALARIED  
EMPLOYEES OF COOPER - PLAN A,  
REPRESENTED IN THE PROCEEDING BY  
COUNSEL (the "Represented Employees")  
Respondents

**BEFORE:**

Mr. C.S. (Kit) Moore, Member of the Tribunal and  
Chair of the Panel  
Mr. Colin H.H. McNairn, Vice Chair of the Tribunal  
Ms. Judith Robinson, Member of the Tribunal

**REPRESENTATIONS BY:**

For Cooper:  
Mr. Randy V. Bauslaugh

For the Superintendent :  
Mr. L. Glenn Frelick  
For the Represented Employees:  
Ms. Dona L. Campbell



## REASONS FOR DECISION

This decision is in response of an application to the Tribunal by the Represented Employees for an award of their costs in this proceeding, in the amount of \$3500, against Cooper.

The proceeding to which the application relates arose out of a notice of proposal by the Superintendent dated July 2, 1998 (the "Notice of Proposal") to make an order for the partial wind up of the Pension Plan, in relation to those members and former members of the Pension Plan who were employed by the Company at its Port Hope, Ontario location and who ceased to be employed during the wind up period specified in the Notice of Proposal (the "Affected Persons"). Those Affected Persons include the Represented Employees.

Cooper filed a Hearing Request with the Tribunal in respect of the Notice of Proposal on August 14, 1998. A pre-hearing conference was held on October 26, 1998 at which Cooper, the Superintendent and the Represented Employees appeared through their respective counsel. As a result of the pre-hearing, the Affected Persons were given full party status in the proceeding, certain matters at issue were identified and various elements of the hearing procedure were agreed upon. A pre-hearing conference memorandum was settled among the parties and distributed to them by the Registrar of the Tribunal on February 16, 1999. Dates for the hearing of March 30 - 31, 1999 were set and confirmed to the parties by the Registrar on January 6, 1999.

Cooper advised the Registrar, by letter of March 3, 1999, that it was withdrawing its Hearing Request. Immediately thereafter the Represented Employees made written application to the Tribunal for an award of costs against Cooper, with supporting reasons. Cooper then made written representations against the making of such an award. The

Superintendent advised that she took no position with respect to the application for costs.

We have concluded that an award of costs against Cooper, in favour of the Represented Employees, is not justified in the circumstances of this proceeding. Cooper has offered a reasonable explanation for the withdrawal of its Hearing Request within the month before the scheduled hearing, namely the anticipated time and costs involved in finally resolving the issues raised and expected to be raised in the proceeding. Those issues that were raised by Cooper, at the pre-hearing conference, were real and substantial, although we do not express any opinion as to whether Cooper's position on those issues would ultimately be sustained following a hearing. Finally, there have been no unreasonable delays in any of the steps in the proceeding. In the Tribunal's view, Cooper was not responsible for any delays that could be said to have unfairly prejudiced the Represented Employees.

Consequently, we deny the application of the Represented Employees for an award of costs against Cooper.

Dated this 6th day of April, 1999 at the City of Toronto, Province of Ontario.

C.S. (Kit) Moore, Member and Chair of the Panel

Colin H.H. McNairn, Vice Chair

Judith Robinson, Member





## Notice

### New Actuarial Information Summary Form

On March 17, 1999, the Canadian Association of Pension Supervisory Authorities (CAPSA) endorsed an Actuarial Information Summary form (AIS) for implementation by CAPSA members at their option. The AIS has been jointly developed by FSCO, the Office of the Superintendent of Financial Institutions Canada (OSFI) and Revenue Canada in order to assist with the regulation of pension plans containing a defined benefit provision. Representatives of the Canadian Institute of Actuaries and FSCO's Actuarial Advisory Committee also participated in the development of the AIS.

The AIS is intended to be filed concurrently with the funding valuation reports filed with respect to such pension plans. Funding valuation reports do not follow a set format, and the purpose of the AIS is to provide, in a standard format, the key information contained in such reports.

FSCO, OSFI and Revenue Canada have adopted the AIS for use with respect to plans registered

with FSCO or OSFI. Other CAPSA members may in future choose to adopt the AIS for use with respect to their registered pension plans.

For pension plans registered with FSCO that contain a defined benefit provision, a completed AIS will be required to be filed by the plan administrator concurrently with any funding valuation report that is filed with FSCO or Revenue Canada on or after July 1, 2000.

Before making copies of the AIS available, FSCO intends to consult on the new form with the individuals who volunteered for FSCO's consultation roster of administrators and plan sponsors (see page 11 of the December 1998 FSCO Pension Bulletin, volume 7, issue 1). After this consultation has been completed, copies of the AIS will be made available by the fall of 1999.

The content and design of the AIS will also be reviewed in 2001 in order to determine whether any changes to the AIS are required as a result of experience with the form.



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THE FINANCIAL SERVICES COMMISSION OF ONTARIO

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# PENSION BULLETIN

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SEPTEMBER 1999

VOLUME 8, ISSUE 2

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The Financial Services Commission of Ontario Act, 1997, the Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 R..R.O. 1990 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

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## General Announcements

### Pension Plans Branch - structure, roles and responsibilities

The Pension Plans Branch (PPB) is comprised of four distinct units: the Operations Unit; the Actuarial Consulting Unit, the Technical Consulting Unit, and the Administration and Operations Support Unit. The overall responsibility of PPB is to support the Superintendent in the administration of the *Pension Benefits Act of Ontario (PBA or Act)* and its regulations.

#### Operations

The Operations Unit consists of 16 pension officers, four senior pension officers, and a senior manager. There are approximately 7,000 registered pension plans in Ontario. Each plan is assigned to one of the 20 officers, who is responsible for ensuring compliance with the *Act*, and the Regulations, policies, procedures and practices of the Financial Services Commission of Ontario (FSCO).

Both the senior pension officers and the pension officers perform a variety of tasks in discharging their responsibilities, including the review and processing of applications for pension plan registrations and plan amendments; wind-ups; asset transfers; conversions and surplus reversions. The officers deal directly with administrators, consultants, and plan members on a daily basis.

The insolvency section, which is now part of the Operations Unit, is staffed by two insolvency co-ordinators. They are responsible for co-ordinating the administration of the wind-up process for pension plans of insolvent companies, including the appointment of third party administrators, and the review and processing of applications for the Pension Benefit Guarantee Fund (PBGF).

#### Actuarial Consulting

The Actuarial Consulting Unit, which is managed by the chief actuary, is comprised of a risk and compliance specialist, an actuarial associate and an actuarial

assistant. The primary role of the unit is to provide professional actuarial services to staff in the Operations Unit, and in the supervision of the financial condition of pension plans. Actuarial staff review actuarial reports submitted to or filed with the PPB, and develop policies and guidelines regarding the review of the reports. The unit also lends its expertise to policy development in such areas as plan design, funding, valuation and the PBGF.

#### Technical Consulting

The Technical Consulting Unit is a unit of three technical consultants and a senior manager. The unit is responsible for providing technical advice and training on pension regulation to PPB staff.

The Filings and Data Verification section is also part of the Technical Consulting Unit. This section is responsible for ensuring that plan administrators comply with the *Act's* filing requirements. The section staff consists of a compliance officer, a compliance assistant and two co-op students.

#### Administration and Operations Support

The Administration and Operations Support Unit is comprised of four staff who co-ordinate a range of program and administrative support services including finance and human resources support; issues management; correspondence and document flow; and information and records management. The unit also co-ordinates the development and maintenance of effective computer systems support for the PPB.

#### Making enquiries on pension matters

Every day, administrators, their agents, consultants and plan members pose a variety of questions to FSCO's PPB staff. Questions generally fall into two categories – general and plan specific.



Questions of a general nature are either answered by the receptionist, or directed to the person responsible for answering calls that day. Routine or general enquiries receive a verbal response. If an enquiry is plan specific, the caller will be directed to the pension officer responsible for that plan.

Any enquiry will be answered by phone, if possible. However, a caller may be asked to put the question in writing. Callers are asked to explain the issue as clearly as possible so the enquiry may be processed quickly. Sometimes a seemingly straightforward enquiry can actually be complex, or raise other issues with significant implications.

If you are making a written enquiry, you should:

1. provide a brief background note
2. explain the business purpose of your proposed action
3. separate the legal issues from the policy issues

In addition, provide your assessment of the situation. Tell PPB staff what you think and why. It is helpful for staff to hear your view of any broader policy implications that the issue may raise. Your suggested direction or answer may well be correct.

While PPB staff are available to answer questions on administrative and policy issues, they cannot provide legal advice.

PPB staff are required to deal with enquiries responsibly for the protection of all parties involved. At the same time, they strive to provide the best possible service. The quality of the service and the timeliness of the response depend largely on the quality and specificity of the submission.





## Contacts for Plan Specific Enquiries

### Pension Plan Allocations

Name	Title	Telephone #	Allocation Alpha Range
Jaan Pringi	Senior Pension Officer	(416) 226-7826	See Note 1
Vacant – See Note 2	Pension Officer	See note 2	#’s-ASCU
Penny McIlraith	Pension Officer	(416) 226-7822	Associates-BTM
Sharon Polischuk	Pension Officer	(416) 226-7819	Bull-CDA
Irene Mook-Sang	Pension Officer	(416) 226-7824	Central-CUSO
Lynda Ellis	Senior Pension Officer	(416) 226-7809	See Note 1
Maureen Barber	Pension Officer	(416) 226-7790	En-Gkn
Deric Jacklin	Pension Officer	(416) 226-7768	Gko-Hz
Vacant - See Note 2	Pension Officer	See note 2	I-King
David Allan	Pension Officer	(416) 226-7803	Kinh-Mark
Gino Marandola	Senior Pension Officer	(416) 226-7820	See Note 1
Jeff Chuchman	Pension Officer	(416) 226-7807	D Graz-Em
John Graham	Pension Officer	(416) 226-7774	Marl-Nes
Simon Laxon	Pension Officer	(416) 226-7781	Net-Pepsi
Larry Martello	Pension Officer	(416) 226-7821	Pepsij-Rob
Rosemin Jiwa-Jutha	Senior Pension Officer	(416) 226-7816	See Note 1
Todd Hellstrom	Pension Officer	(416) 226-7814	Roc-Sons
Gwen Gignac	Pension Officer	(416) 226-7812	Sont-The Drop
Stanley Chan	Pension Officer	(416) 226-7806	The Droq-Unicorp
Clifford Amilcar	Pension Officer	(416)226-7804	Unicorq-Zz

**Note 1:** Senior Pension Officers (SPO) will have a special allocation.

The administrators of the plans assigned to the SPOs will be notified shortly.

**Note 2:** Please contact the SPOs for these allocations.



## Staff changes

At the Pension Advisory Forum last spring, the PPB outlined its proposal to implement a restructuring which included the creation of a new position, senior pension officer. The goal of the restructuring is to improve service to our stakeholders:

The restructuring will see the staff of the Operations Unit organized into teams with the senior pension officer acting as the team leader. There will be four teams established consisting of one senior pension officer, four pension officers, and one junior position to be created.

The senior pension officers are Lynda Ellis, Rosemine Jiwa-Jutha, Gino Marandola and Jaan Pringi. In August the branch finalized the composition of the teams and recruited four pension officers to fill current vacancies. Nardeo Sham is the new Senior Manager, Operations.

All registered pension plans will continue to be allocated primarily to the pension officers, with the senior pension officers having a small allocation. Plan administrators and their representatives will continue to have a single point of contact in the normal course of business. In addition, the senior pension officers provide an alternate, stable point of contact. A result of these changes was the need to revisit the basis of allocating the pension plans.

The allocation changes have now been finalized and the vacant pension officer positions have been filled. Plan administrators are advised to review the Pension Plan Allocation list to see the name of their pension officer.

Carla Adams has left the Pension Plans Branch and joined the Pension Policy Unit as senior policy analyst. She may be contacted at 416-226-7756.



## FSCO's decision-making process

Effective July 1, 1998, the *Financial Services Commission of Ontario Act, 1997*, places all first-instance decision-making authority in the hands of the Superintendent of Financial Services. This change has required the Superintendent to delegate some decision-making responsibilities and required FSCO to develop — in consultation with stakeholders — new decision-making processes. FSCO is committed to a decision-making process that is effective and efficient, fair and equitable, open and transparent, and displays integrity. Not only does the FSCO legislation give the Superintendent responsibility for first-instance decision-making, it also provides the Superintendent with broad authority to delegate decision-making to others in the organization. To increase efficiency, the Superintendent has delegated certain decision-making powers to FSCO staff. “Who does what” is based on the nature of the application and the expertise required to make the decision. Under delegated authority, first-instance decisions are made by staff in some cases, and by the Director of the Pension Plans Branch in others.

The Superintendent has retained authority for certain key first-instance decisions. These include:

- approving an application to pay surplus to an employer;
- consenting to a refund of member or former member contributions;
- consenting to a refund of employer overpayments or expenses;
- approving a transfer of assets from one pension fund to another where terms or conditions are imposed;
- ordering the wind-up of a pension plan; and
- revoking the registration of a pension plan that does not comply with the *Pension Benefits Act (PBA)* and Regulation.

An internal committee first reviews those matters the Superintendent will decide. This committee consists of the Director of the Pension Plans Branch and the Director of the Policy and Communications Branch, with legal counsel acting as an advisor.

An independent appeal process is an essential component of the decision-making process. The legislation provides that any party served with a Notice of Proposal may request a hearing before the Financial Services Tribunal (FST or Tribunal). The FST is an independent, adjudicative body that hears appeals from regulatory decisions by the Superintendent and reviews proposed orders of the Superintendent. It is committed to providing a decision-making process that meets high standards, is accessible, and is guided by fair practices and procedures.

An open and transparent decision-making process requires that decisions made by the Superintendent and the FST be communicated widely to stakeholders with an interest in regulatory developments. In a policy published in the April 1999 edition of the *Pension Bulletin*, FSCO indicated its intention to publish:

- final decisions of the Superintendent on all matters where a Notice of Proposal has been issued, including final decisions on many matters that were not routinely published by the former Pension Commission of Ontario (PCO);
- final decisions of the Superintendent on certain matters where a Notice of Proposal is not required, including final decisions on significant matters such as the allocation of assets from the Pension Benefits Guarantee Fund and the appointment of administrators;
- requests for hearings by the FST regarding decisions or proposed decisions of the Superintendent and key dates related to such hearings;
- decisions of the FST, including interim rulings; and
- charges laid under the PBA, after the first appearance before the courts, and the outcome of prosecutions.

These decisions are published in the *Pension Bulletin* (pension decisions only) and posted to FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca). The Superintendent's decisions with respect to routine matters, such as the approval of a wind-up report, will not be published by FSCO.



## Advisory committees

### FSCO Pension Investment Advisory Committee

Alfred G. Wirth, Chair  
Wirth Associates Inc.

Robert Bertram,  
Ontario Teachers' Pension Board

Jim Franks,  
Frank Russell Company

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### FSCO Pension Actuarial Advisory Committee

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Aon Consulting Inc.

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K. Paul Duxbury,  
PricewaterhouseCoopers LLP

Karen Figueiredo,  
Towers Perrin

Patrick F. Flanagan,  
Eckler Partners Limited

Karen G. Long,  
KPMG Actuarial, Benefits & Compensation Inc.

Kem Majid,  
Watson Wyatt

Jean-Claude Primeau,  
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Coopers & Lybrand

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Institute of Chartered Accountants of Ontario

Bryan Kogut,  
BDO Dunwoody

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State Street Trust Company Canada

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Stikeman, Elliott

Mary M. Picard,  
Fraser Milner

Douglas Rienzo,  
Osler, Hoskin & Harcourt



## Financial Services Commission Of Ontario Statement Of Priorities 2000-2001

The Financial Services Commission of Ontario (FSCO) is an arm's-length agency of the Ministry of Finance. A regulatory and adjudicative body established under the *Financial Services Commission of Ontario Act, 1997*, it became fully operational as of July 1, 1998.

The creation of FSCO reflects the trend toward integration in the financial services marketplace. FSCO regulates insurance, pension plans, loan and trust companies, credit unions and caisses populaires, mortgage brokers and co-operatives. FSCO's mandate is to protect the public interest and enhance public confidence in the regulated sectors. To do this, FSCO works to deliver efficient and effective regulatory services that protect consumers and promote a stable, reliable and competitive industry.

FSCO is committed to being a vigilant, fair-minded and forward-looking regulatory agency with a constructive presence in Ontario's financial services marketplace. Its regulatory functions reassure consumers that insurance claims will be paid, pension promises kept and deposits safeguarded reinforcing public confidence, the foundation for the industry.

The structure of FSCO comprises three elements: the Commission or "Board," the Financial Services Tribunal, and the Superintendent of Financial Services and staff.

The Commission or "Board" has five members: the Chair and two Vice-Chairs appointed by the Lieutenant-Governor-in-Council; the Director of Arbitrations responsible for the automobile insurance dispute resolution system; and the Superintendent of Financial Services, who is also FSCO's Chief Executive Officer. The Board has a number of statutory responsibilities, including publishing FSCO's annual Statement of Priorities, and making recommendations to the Minister of Finance on matters affecting the regulated sectors.

The Financial Services Tribunal is an independent adjudicative body that hears appeals of regulatory decisions by the Superintendent and reviews proposed orders of the Superintendent. The Tribunal includes a Chair and two Vice-Chairs, who are also the Chair and Vice-Chairs of the FSCO Board, plus up to 12 members with experience and expertise in the regulated sectors.

The Tribunal is committed to providing a decision-making process that meets high standards, is accessible and is guided by fair practices and procedures.

The Superintendent of Financial Services is responsible for general supervision of the regulated sectors. All FSCO staff report directly or indirectly to the Superintendent. The staff, who are civil servants under the *Public Service Act*, perform FSCO's day-to-day work.

In pursuing its mandate, FSCO maintains crucial relationships with a diverse range of stakeholders including consumers, suppliers and administrators of financial services, financial services professionals and advisors, and other federal and provincial regulators. Under the legislation, FSCO is required to deliver to the Minister of Finance and publish by June 30 each year, a statement setting out its proposed priorities for the following fiscal year. The annual Statement of Priorities and the process used to develop it represent key vehicles for communication between FSCO and its stakeholders.

FSCO's first Statement of Priorities was published in the summer of 1998. FSCO's second Statement of Priorities, covers the period April 1, 2000 to March 31, 2001. This statement incorporates comments received from FSCO's stakeholders earlier this year, as well as feedback received as a result of a Request for Submissions published by FSCO in The Ontario Gazette on April 24, 1999.



## Progress report

FSCO's first Statement of Priorities outlined a series of initiatives to achieve the overriding goal of protecting the interests of consumers. Substantial progress in implementing this agenda was made in the 1998-99 fiscal year.

The consolidation of the three predecessor organizations the Ontario Insurance Commission, the Pension Commission of Ontario and the Deposit Institutions Division of the Ministry of Finance was successfully completed with a seamless transition for the regulated sectors. The integration of management from the three organizations was accomplished, along with the relocation of staff to a single location in north Toronto, a move designed to achieve cost savings for the new organization. The Financial Services Tribunal adopted interim rules of practice and procedure and held its first hearings.

In consultation with the industry, FSCO established a transparent decision-making process for pension applications formerly decided by the PCO but now determined by the Superintendent. A new process for developing pension policies to guide the application of the legislation was designed. The new policy process involves continued stakeholder participation.

To ensure FSCO's computer systems were prepared for the Year 2000, modifications were made to FSCO's computer systems. Contingency plans were developed to ensure continued delivery of critical programs and services in the event of any serious business disruptions arising as a result of the transition to the Year 2000. FSCO also raised awareness of the Year 2000 issue among the regulated sectors to encourage them to take proactive steps to prevent service disruption.

FSCO worked with the Ontario Securities Commission (OSC) to create a national forum of insurance, pension and securities regulators that will advance the harmonization and co-ordination of financial services regulation. The Joint Forum of Financial Market

Regulators includes representatives from the Canadian Securities Administrators (CSA), the Canadian Council of Insurance Regulators (CCIR) and the Canadian Association of Pension Supervisory Authorities (CAPSA). The mandate of the Joint Forum is to coordinate and streamline the regulation of products and services in the Canadian financial markets. Some of the initiatives of the Joint Forum include the regulation of segregated funds and mutual funds, distribution structures, financial planning and information sharing.

An independent review of FSCO's process for the filing of rates and risk classification systems by auto insurers was conducted, and recommendations were made for increasing the cost-effectiveness and efficiency of the process. To better inform consumers, FSCO published a guide called *Shopping for Car Insurance*, which includes the results of insurers' first claims satisfaction surveys. FSCO also supported the government's two-year review of the automobile insurance system, which led to the tabling of fine-tuning legislative amendments in late 1998.

More than 180 submissions were received in response to the Discussion Paper on Regulation of Insurance Distribution and Co-ordination of Financial Services Regulation. Given the evolving national debate on regulatory structures in the financial services sector, FSCO decided not to proceed with the proposed industry-based regulatory body. However, FSCO will move on other issues raised in the paper, including licensing, consumer protection and co-ordination of financial services regulation.

FSCO established an Advisory Council to provide ongoing advice and recommendations on such matters as priorities, budgets, fees and assessment structures. Chaired by the Superintendent, the advisory group includes balanced representation from the communities of interest affected by FSCO.



## Priorities for 2000-2001

FSCO's strategic priorities for 2000-2001 are to:

- increase emphasis on consumer protection through education,
- improve operational effectiveness and service,
- simplify the regulatory environment,
- promote compliance, and
- strengthen FSCO as an organization.

While the priorities listed are for the next fiscal year, FSCO will begin working on them immediately. The following sections explain why these priorities have been adopted and how FSCO intends to address them.

### **Increase emphasis on consumer protection through education**

FSCO's first Statement of Priorities, published last year, declared that protecting the interests of consumers – such as depositors, insurance policy-holders and pension plan members – is the fundamental purpose of financial services regulation and the reason FSCO exists. This principle remains valid.

In an increasingly complex marketplace, it is essential for consumers to understand the products and pricing being offered, as well as the opportunities and risks of investing in long-term financial security.

Knowledgeable and informed consumers are the driving force in a competitive market: they demand top value and reward those who deliver it.

In recent months a strong consensus has emerged that consumer knowledge, information and skills must be increased. This was a theme sounded by both the MacKay Task Force Report on the Future of the Canadian Financial Services Sector and the Stromberg Report on Investment Funds in Canada and Consumer Protection.

To empower consumers, FSCO will increase emphasis on consumer education. One initiative will be an analysis of consumer information needs and how they are currently being met. FSCO will then work with

industry, consumer and educational groups to develop a plan to facilitate efforts to fill gaps and improve consumer access to the right information at the right time.

FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca) is an important element in the focus on consumer education. The site's design will be made more user-friendly, and the consumer information content will be expanded. In the longer term, FSCO will explore interactive options and strategic linkages with related sites. In addition, FSCO will publish an up-to-date guide for pension plan members.

The Office of the Insurance Ombudsman will work with consumer and industry groups on new initiatives to assist consumers when buying insurance, making claims or resolving problems with insurers. The Office will set up a process for collecting data on complaints from insurance companies, as a basis for further planning.

In response to concerns raised during the two-year review of auto insurance legislation, FSCO will work with consumers and insurers to develop a plain language automobile policy disclosure form and a standard settlement disclosure form.

### **Improve operational effectiveness and service**

FSCO is accountable for the cost-effective use of the funds entrusted to it. The organization is committed to excellence in operations and strives to deliver timely, high-quality regulatory services while minimizing costs. Through continuous improvement in regulatory processes and business operations, FSCO will protect consumers more effectively and sustain a healthy, competitive marketplace.

A project team will continue with a review of all FSCO business processes and practices to improve FSCO's operational efficiency and reduce the industry's compliance costs. All branches of the organization are participating in the review and redesign of processes to re-engineer and streamline operations while enhancing consumer protection. For example, FSCO is reviewing





the regulatory process for the mortgage brokerage sector in close consultation with front-line practitioners, financial institutions and industry and consumer associations. FSCO will also develop and begin to implement a plan for conducting a review of the administration of the Pension Benefits Guarantee Fund. FSCO will move forward on its plans to establish a centralized service centre to handle inquiries and complaints from its external stakeholders. At the same time, FSCO will develop and publish performance measures for all operations. Improved response time will be targeted for pension applications. Pension plan registration and wind-ups, for example, will be accelerated. The criteria for submitting automobile rate and risk classification filings under an expedited process will be expanded and filing guidelines will be simplified, following a recent consulting study on the filing process. The Financial Services Tribunal will develop performance measures and service standards for its adjudicative processes.

FSCO will make adjustments to the dispute resolution system for automobile accident benefits, in line with recommendations in an evaluation report by Hon. George Adams. While concluding that the system is working well, the report made suggestions for improvement. Recommendations focused on such areas as the need to revise timelines in the arbitration process to reduce delay, and the need to reconsider the strict divisions between mediation and arbitration given the substantial opportunity for mediation during the arbitration stage.

FSCO will continue to explore opportunities for applying a risk-based approach to supervision of all of the sectors it regulates. In the area of pensions, FSCO will implement a risk-based system for supervising the financial condition of pension plans. The initial steps will be to verify risk-assessment criteria for use in screening plans and selecting those requiring in-depth review. In designing and developing its overall approach, FSCO will take into consideration the model

used by the federal Office of the Superintendent of Financial Institutions.

FSCO will promote the use of alternative dispute resolution principles and processes across the sectors it regulates.

### **Simplify the Regulatory Environment**

To minimize costs and red tape while strengthening consumer protection, FSCO is working energetically to harmonize processes with other regulators. The financial services marketplace will function better if regulatory requirements can be co-ordinated and simplified to achieve greater consistency and reduce gaps and overlaps. While the role of an arm's-length regulator is to implement government legislation and policy directions, FSCO also advises the government on how to enhance the regulatory framework .

FSCO will continue to play a leadership role in the Joint Forum of Financial Market Regulators, the Canadian Council of Insurance Regulators (CCIR) and the Canadian Association of Pension Supervisory Authorities (CAPSA). In response to requests from the CCIR and CAPSA, FSCO has prepared business cases for the creation of permanent secretariats to support the ongoing work of these bodies. Costs will be shared by the participating jurisdictions, with Ontario's portion recovered from the industry. The secretariats will assist the regulators in strengthening consumer protection by delivering and managing initiatives to simplify regulations and harmonizing regulatory activities in consultation with the industry and other stakeholders.

The Joint Forum of Financial Market Regulators has initiated projects to address issues related to the regulation of segregated funds and mutual funds and financial planning activities. Work is also underway to develop an information sharing agreement.

CCIR is currently focusing harmonization efforts on two issues – a one-window approach for financial filings and the classification of different types of insurance. As part of CAPSA's ongoing commitment to pension



harmonization, initiatives such as uniform timeframes for settlement of pension benefits, uniform rules for flexible pension plans, a model actuarial information summary form and a review of the Association of Canadian Pension Management's uniform pension legislation proposal will be undertaken.

In conjunction with the Ministry of Finance, FSCO will undertake a statutorily required five-year review of the *Credit Unions and Caisses Populaires Act* in consultation with stakeholders in the credit union and other financial services sectors who may be affected by recommendations resulting from the review. Based on this review, FSCO will make recommendations to the Minister of Finance on amendments to improve the effectiveness and administration of the Act. Also in the credit unions sector, FSCO and the Deposit Insurance Corporation of Ontario will set up a single on-site verification process to replace current examination and inspection activities. In addition, the two regulators will establish a one-window filing process for credit unions that will reduce duplication and facilitate electronic filing. FSCO will also simplify procedures for issuance of securities by co-operatives.

In recent years, Ontario and the federal government have significantly reduced overlap and duplication in regulating the loan and trust industry. FSCO will assist with the effort to determine what further steps can be taken in this direction.

The Ontario government is continuing consultations on amendments to Ontario's *Pension Benefits Act*. The Ministry of Finance and FSCO jointly developed a consultation paper on harmonization and streamlining of pension administration and regulation. FSCO will continue to support the government's commitment to review pension legislation.

As outlined in the Progress Report, FSCO will address a number of the issues raised in the Discussion Paper on Regulation of Insurance Distribution and Co-ordination of Financial Services Regulation. These include licensing issues, such as proficiency standards

for life insurance agents, consumer protection issues, such as point-of-sale disclosure, and the co-ordination of financial services regulation.

FSCO and the Ministry of Finance will consult with the insurance industry and consumer groups on proposed regulatory and legislative changes affecting the sector. Technical amendments to the Statutory Accident Benefits Schedule and other regulations, flowing from the two-year review of auto insurance legislation, will be developed. Also in the area of insurance, discussion papers will be released on the concept of the appointed actuary and on prudent person investment rules.

At present, FSCO takes part in nearly three dozen stakeholder committees to identify and address regulatory issues. To facilitate more focused dialogue, FSCO will put in place a streamlined and effective consultation process with the financial services industry, consumers and other stakeholders.

### Promote compliance

The overwhelming majority of non-compliance is attributable to lack of understanding of requirements. FSCO will therefore enhance guidance to the industry through intensified communications activities. Our aim is to promote willing compliance while, at the same time, violations of legislative and regulatory requirements will be dealt with.

A key objective for FSCO is to ensure that the regulated sectors have a clear understanding of their obligations through publicly-available policies and procedures. FSCO will continue to publish policies, rules and decisions regularly and post this information on its website.

The Financial Services Tribunal will review its rules of practice and procedure as well as adopt and review policies and practice directions as required.

FSCO will work with stakeholders to implement a plan for the ongoing review of all previously published pension policies, which guide the application of



pension legislation. FSCO will also examine some major pension policy issues, including partial wind-ups, surplus policies, adverse amendments, investment disclosure requirements for defined contribution plans, plan governance, and risk-measurement criteria for monitoring funding. In addition, a series of focus groups will be held with pension stakeholders on operational matters such as common deficiencies in filings as identified by staff.

Following the recent consulting study on FSCO's rate filing process, FSCO will implement recommendations contained in a report on FSCO's rate and risk classification filing system.

FSCO will remain vigilant with respect to compliance and will investigate suspected violations and launch prosecutions where appropriate. Consumers will be advised of enforcement actions on a timely basis so they can make informed decisions. Information about enforcement activities will be posted on the FSCO website.

### **Strengthen FSCO as an organization**

As an integrated regulator, FSCO has the potential to deliver better co-ordinated regulation, increased cost-effectiveness and stronger consumer protection. FSCO is committed to realizing this potential by capitalizing on its financial, technological and human resources and taking advantage of synergies among its constituent elements.

FSCO operates on a cost recovery basis. In consultation with stakeholders, FSCO will recommend to the Minister of Finance a fee and assessment structure that will fairly apportion costs among the regulated sectors.

To keep pace with the constantly changing financial services business, FSCO will continue to build staff expertise and knowledge through an ongoing program of staff development, including partnerships with industry. A comprehensive research and education plan will be prepared to strengthen the capabilities of

FSCO employees in the sectors they regulate. Under this plan, FSCO will support in-house and external training opportunities.

The Financial Services Tribunal will also develop and implement an orientation and training policy, as well as position descriptions and performance evaluations for its members.

A training and development program called FUTURES will provide senior FSCO staff with the opportunity to demonstrate leadership on corporate and organizational projects. The program is intended to allow the future managers of FSCO to acquire the skills and experiences necessary to advance their career goals as well as FSCO's business objectives.

FSCO will continue to deploy technology to increase the efficiency and effectiveness of regulatory services. The wider use of technology will be explored in the issuance of lending licenses and regulatory approvals for credit unions. Automobile insurers will be offered the option of electronic filing of rates and other information.

The Office of the Insurance Ombudsman encourages the industry to take primary responsibility for dealing with consumer complaints. A complaint-handling protocol has been established in all insurance companies, and the Office becomes involved only after the company process has been completed. FSCO plans to expand this complaint resolution system to other regulated sectors.

Preliminary work indicates that the electronic tracking system used by the Ombudsman's Office for tracking insurance complaints can be adapted to the business needs of other areas. The Office will work with other FSCO branches to prepare a business case for a centralized tracking system to consolidate data FSCO-wide. In addition, the Office of the Ombudsman will develop a process for addressing complaints from external stakeholders about FSCO's operations.



Finally, with the consolidation of three distinct organizations, each with a unique tradition and history, into one organization, it will be important to develop a cohesive cultural identity for FSCO. To achieve this goal, all FSCO staff will be invited to participate in the development of corporate values and a cultural identity which fosters an efficient, effective and professional organization

Martha Milczynski	Dina Palozzi
Acting Chair	Chief Executive Officer
Financial Services	Financial Services
Commission of Ontario	Commission of Ontario
Acting Chair	
Financial Services Tribunal	
Superintendent of Financial Services	





## Legislative Changes/Regulatory Policies

### Clarification - Same-Sex Spousal Benefits - Leshner Ruling Explained (Policy B100-800)

Released in December 1992, Policy B100-800 discusses the impact of the Ontario Human Rights Commission's decision dated August 31, 1992, in the Leshner case. In this case, the Board of Inquiry found that the denial of survivor benefits to Leshner's same-sex partner, pursuant to the terms of the Public Service Pension Plan, constituted a violation of the Ontario Human Rights Code. However, because the *Income Tax Act* (Canada) (the *ITA*) did not then permit the registration of pension plans that provided for same-sex benefits, the Board of Inquiry ordered that an "off-side" or "parallel" arrangement be established to provide survivor benefits to same-sex couples. The policy concluded:

*Plans providing same sex survivor benefits will not be accepted for registration by the Pension Commission of Ontario, nor will amendments be accepted in that regard.*

Due to recent court decisions which have considered the definition of "spouse" for purposes of the *ITA* [the Rosenberg decision (Ont. C.A.)] and the *Pension Benefits Act* [the OPSEU decision (Ont. Gen. Div.)], the final sentence of policy B100-800 is no longer accurate.

**Pension plan texts and plan amendments providing for same-sex survivor benefits are acceptable for registration by the Financial Services Commission of Ontario.**

Please refer to Policy S500-901 (Same-Sex Spouse Survivor Benefits - The Trustees of the OPSEU Pension Plan v. Her Majesty the Queen et al.) for additional information. It was published in the April 1999 issue of FSCO's Pension Bulletin (Volume 8, Issue 1).

### Clarification - LIF Explanation and Tables for Minimum and Maximum Withdrawal Percentages (Policy L050-500)

This policy, first released in December 1992 and amended in February 1994, provides a general description of the Ontario Life Income Fund (LIF).

Paragraph 10 on page three of this policy (under the heading "Minimum withdrawal formula") stated:

*The planholder's age must be used as the basis for the withdrawal calculation. (Under RRIF rules a joint annuitant may be named. This allows for the calculation of the minimum withdrawal formula based on the spouse's age. This option is not available under the Ontario LIF.)*

This paragraph is no longer accurate. It reflected the provisions of Schedule 1 (Life Income Fund Requirements) which was added to Regulation 909, R.R.O. 1990 ("the Regulation"), effective September 18, 1992.

The provisions of Schedule 1 have since been amended. More specifically, subsection 5(2) of Schedule 1 was amended by O. Reg. 665/94, effective October 28, 1994, to provide:

*The amount of income paid out of the life income fund during the fiscal year must not be less than the minimum amount prescribed for registered retirement income funds under the Income Tax Act (Canada).*

The minimum withdrawal rules applicable to RRIFs under the *Income Tax Act* (Canada) (the *ITA*) became applicable to Ontario LIFs at that time and negated the paragraph in Policy L050- 500 cited above. The current *ITA* allows the annuitant to elect to use his or her spouse's age in the minimum withdrawal calculation, so this election is permissible for an Ontario LIF.

For additional information about the minimum withdrawal calculation, please refer to Policy L050-650 (Minimum and Maximum Withdrawals, O. Reg. 909, Schedule 1), or contact the Registered Plans Division of Revenue Canada at 1-800-267-3100 or (613) 954-0419.



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## Enforcement Matters

### Charges laid under the Pension Benefits Act

*Thorco Equipment Ltd.*

On May 24, 1999, Thorco Equipment Inc. and John Thordarson were each charged with breaching the terms of a probation order under section 72 of the *Provincial Offences Act*. The charges relate to a probation order made on March 4, 1997, pursuant to charges imposed under the *Pension Benefits Act* by the Ontario Provincial Court. The probation term was that restitution be made to the pension fund in the amount of \$72,223.84 by March 31, 1999. Payments of only \$4,000.00 were made. The first appearance with respect to these charges took place on June 29, 1999, at which time the Ontario Court of Justice scheduled a pre-trial for October 18, 1999.

### Court cases concluded under the Pension Benefits Act

*Hawker Siddeley Canada Inc.*

On June 15, 1999, the Superior Court of Justice (Divisional Court) heard an appeal brought by the National Automobile, Aerospace, Transportation and General Workers Union of Canada (the CAW) with respect to the decision dated January 28, 1999, (reasons released February 17, 1999) of the Pension Commission of Ontario consenting to a distribution of surplus as proposed by the employer, Hawker Siddeley Canada Inc. The CAW settled the issue of surplus distribution with the employer on June 14, 1999. The only issue before the court was whether it had jurisdiction to deal with the PCO's decision refusing standing to the CAW on the surplus application. The court found that it would not deal with the standing issue on the ground that this issue was now moot. This decision has not been appealed.



## Superintendent of Financial Services

Orders that pension plans be wound up -  
Section 69 of the *Pension Benefits Act*

*Peoples Jewellers Limited Executive Pension Plan*,  
Registration No. 0597666 (formerly C- 16089)

IN THE MATTER OF the Pension Benefits Act,  
R.S.O. 1990, c. P.8; as amended by the Financial  
Services Commission of Ontario Act, 1997, S.O.  
1997, c.28;

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to Make an Order  
pursuant to section 69 of the Pension Benefits Act,  
R.S.O. 1990, c. P.8, as amended by the Financial  
Services Commission of Ontario Act, 1997, S.O. 1997,  
c.28; respecting the **Peoples Jewellers Limited Executive  
Pension Plan, Registration No. 0597666 (formerly  
C-16089)**, dated the 12th day of January, 1999.

TO: Deloitte & Touche Inc.  
BCE Place  
181 Bay Street  
Suite 1400  
Toronto, ON  
M5J 2V1  
Attention: Bruce Bando  
Senior Vice-President  
**Administrator of the Peoples Jewellers  
Limited Executive Pension Plan**

AND TO: Peoples Jewellers Limited  
1440 Don Mills Road  
Don Mills, ON  
M3B 3M1  
Attention: Roman Doroniak  
Chief Financial Officer  
**Employers**

### ORDER

ON the 14th day of January, 1999, the Superintendent  
of Financial Services issued a **Notice of Proposal to  
make an Order** dated the 12th day of January, 1999,  
pursuant to subsection 69(1) of the Pension Benefits  
Act, R.S.O. 1990, c. P.8, as amended by the Financial  
Services Commission of Ontario Act, 1997, S.O. 1997,  
c.28 (the "Act"), to the Administrator and to the  
Employer to wind up in whole the **Peoples Jewellers  
Limited Executive Pension Plan, Registration No.  
0597666 (formerly C-16089)**, effective the 3rd day  
of March, 1993.

NO Notice requiring a hearing was delivered to the  
Financial Services Tribunal, (the "Tribunal"), by the  
Administrator and/or the Employer within the time  
prescribed by subsection 89(6) of the Act.

**IT IS THEREFORE HEREBY ORDERED** that the  
**Peoples Jewellers Limited Executive Pension Plan**,  
**Registration No. 0597666 (formerly C-16089)** be  
wound up in whole, effective the 3rd day of March,  
1993, for the following reasons:

1. There was a cessation or suspension of employer  
contributions to the pension fund; and
2. The employer failed to make contributions to the  
pension fund as required by this Act or the  
regulations.

**PURSUANT TO** subsection 69(2) of the Act, the  
Administrator is required to give notice of this Order  
to the following persons by transmitting a copy hereof:  
KPMG Actuarial, Benefits and Compensation Inc.  
Suite 3300, Commerce Court West  
P.O. Box 31, Stn Commerce Court  
Toronto, ON  
M5L 1B2



Attention: Michael Creber  
Senior Vice President  
**Receiver**

Royal Trust  
Royal Trust Tower  
77 King Street West, 7th Floor  
Toronto, ON  
M5W 1P9

Attention: Lorraine Hibbert  
Manager, Client Service  
**Custodian**

**DATED** at North York, Ontario this first day of  
March, 1999.

K. David Gordon  
Director (Acting),  
Pension Plans Branch  
by delegated authority from  
Dina Palozzi,  
Superintendent of Financial Services





*The Pension Plan for Employees of Trenton Machine Tool Inc., Registration No. 0589028 (formerly C-15106)*

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8; as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28; respecting the **Pension Plan for Employees of Trenton Machine Tool Inc., Registration No. 0589028 (formerly C-15106)**, dated the 29th day of January, 1999;

TO: The Manufacturers Life Insurance Company  
500 King Street North  
Waterloo, Ontario  
N2J 4C6  
Attention: Karen Osborne  
Discontinuance Underwriter  
**Administrator of The Pension Plan for Employees of Trenton Machine Tool Inc.**

AND TO: Trenton Machine Tool Inc.  
Douglas Drive  
P.O. Box 698  
Trenton, Ontario  
K8V 5W6  
Attention: C. Clement  
Office Manager  
**Employers**

**ORDER**

ON the 1st day of February, 1999, the Superintendent issued a **Notice of Proposal to make an Order** dated the 29th day of January, 1999, pursuant to subsection 69(1) of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act"), to the

Administrator and to the Employer to wind up in whole **The Pension Plan for Employees of Trenton Machine Tool Inc., Registration No. 0589028 (formerly C-15106)**.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal ("the Tribunal") by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that **The Pension Plan for Employees of Trenton Machine Tool Inc., Registration No. 0589028 (formerly C-15106)** be wound up in whole, effective October 31, 1995, for the following reason:

1. There was a cessation or suspension of employer contributions to the pension fund.

**THE ADMINISTRATOR IS REQUIRED**, pursuant to subsection 69(2) of the Act, to give notice of this Order to the following persons by transmitting a copy hereof:

Coopers & Lybrand Limited  
145 King Street West  
Box 126 Postal Station A  
Toronto, Ontario  
M5W 1A2

Attention: James S. Coatsworth  
Senior Vice President

**Trustee in Bankruptcy of Trenton Machine Tool Inc.**

**DATED** at North York, Ontario this 18th day of March, 1999.

K. David Gordon  
Director (Acting),  
Pension Plans Branch  
by delegated authority from  
Dina Palozzi,  
Superintendent of Financial Services



*Registered Pension Plan for Employees of Custom Windows Limited, Registration No. 0977413*

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8; as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28; respecting the **Registered Pension Plan for Employees of Custom Windows Limited, Registration No. 0977413**, dated the 19th of February, 1999;

TO: The Mutual Life Assurance  
Company of Canada  
227 King Street West  
Waterloo, Ontario  
N2J 4C5  
Attention: Ms. Cathy Law  
Client Services Representative  
**Administrator of the Registered Pension  
Plan for Employees of Custom Windows  
Limited**

AND TO: Custom Windows Limited  
c/o 1125 Colborne Street East  
Brantford, Ontario  
N3T 5M1  
Attention: Ms. Cathy Tompkins  
Office Manager  
**Employer**

**ORDER**

ON the 22nd day of February, 1999, I issued a **Notice of Proposal to make an Order** dated the 19th day of February, 1999, pursuant to subsection 69(1) of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act"), to the Administrator

and to the Employer to wind up in whole the **Registered Pension Plan for Employees of Custom Windows Limited, Registration No. 0977413**.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal (the "Tribunal"), within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the **Registered Pension Plan for Employees of Custom Windows Limited, Registration No. 0977413** be wound up in whole, effective November 7, 1996, for the following reasons:

1. There has been a cessation or suspension of employer contributions to the pension plan fund.
2. The employer has failed to make contributions to the pension fund as required by the *Pension Benefits Act* and the Regulations thereunder.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act (Canada)*.
4. A significant number of members of the pension plan have ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of reorganization of the employer.
5. All or a significant portion of the business carried on by the employer has been discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Scott, Pichelli & Graci Ltd.  
77 Hunter Street East  
Hamilton, Ontario  
L8N 1M4

Attention: Mr. J. Paul Graci  
**Employer's Trustee in Bankruptcy**



AND

Industrial Wood & Allied Workers of Canada Local 500  
405 10th Street  
Hanover, Ontario  
N4M 1P7

Attention: Mr. Bruce Weber  
**Employees' Union**

**DATED** at North York, Ontario this 13th day of  
April, 1999.

K. David Gordon  
Director (Acting),  
Pension Plans Branch  
by delegated authority from  
Dina Palozzi,  
Superintendent of Financial Services



*Designated Employees of Brown & Collett Ltd.,  
Registration No. 0586677 (previously C-14839)*

IN THE MATTER OF the Pension Benefits Act,  
R.S.O. 1990, c. P.8; as amended by the Financial Services  
Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to Make an Order  
pursuant to section 69 of the Pension Benefits Act,  
R.S.O. 1990, c. P.8, as amended by the Financial Services  
Commission of Ontario Act, 1997, S.O. 1997, c.28,  
respecting the **Pension Plan for Designated Employees  
of Brown & Collett Ltd., Registration No. 0586677  
(previously C-14839)**, dated the 19th of February, 1999;

TO: Deloitte & Touche Inc.  
BCE Place  
181 Bay Street  
Suite 1400  
Toronto, ON  
M5J 2V1  
Attention: Bruce Bando, CA  
Vice-President  
**Administrator of the Pension Plan for  
Designated Employees of Brown &  
Collett Ltd.**

AND TO: Brown & Collett Ltd.  
2365 Matheson Blvd.  
Mississauga, ON  
L4W 5C2  
Attention: R.W. Bernard  
Controller  
**Employer**

## ORDER

ON the 23rd day of February, 1999, I issued a **Notice  
of Proposal to make an Order** dated the 19th day of  
February, 1999, pursuant to subsection 69(1) of the  
Pension Benefits Act, R.S.O. 1990, c. P.8, as amended  
by the Financial Services Commission of Ontario Act,  
1997, S.O. 1997, c.28 (the "Act"), to the  
Administrator and to the Employer to wind up in

whole the Pension Plan for Designated Employees of  
**Brown & Collett Ltd., Registration No. 0586677  
(previously C-14839).**

NO Notice requiring a hearing was delivered to the  
Financial Services Tribunal, (the "Tribunal"), by the  
Administrator and/or the Employer within the time  
prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the  
**Pension Plan for Designated Employees of Brown &  
Collett Ltd., Registration No. 0586677 (previously  
C-14839)** be wound up in whole, effective March 1,  
1996, for the following reasons:

1. There was a cessation or suspension of employer  
contributions to the pension fund.
2. The employer is bankrupt within the meaning of  
the Bankruptcy and Insolvency Act (Canada).
3. A significant number of members of the pension  
plan ceased to be employed by the employer as a  
result of the discontinuance of all or part of the  
business of the employer or as a result of  
reorganization of the business of the employer.
4. All or a significant portion of the business carried  
on by the employer at a specific location was  
discontinued.

PURSUANT TO subsection 69(2) of the Act, the  
Administrator is required to give notice of this Order  
to the following persons by transmitting a copy hereof:

Price Waterhouse Limited  
5700 Yonge Street  
Suite 1900  
North York, ON  
M4M 4K7

Attention: Craig Munroe  
**Receiver and Trustee in Bankruptcy**





**DATED** at North York, Ontario this 27th day of  
April, 1999.

K. David Gordon  
Director (Acting)  
Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services



*Westinghouse Canada Inc. Pension Plan,  
Registration No. C-10579*

IN THE MATTER OF the Pension Benefits  
Act, R.S.O. 1990, c.P.8;

AND IN THE MATTER OF a Proposal of the  
Superintendent of Pensions to Make an Order  
pursuant to section 69 of the Pension Benefits Act,  
R.S.O. 1990, c.P.8, respecting the **Westinghouse  
Canada Inc. Pension Plan, Registration No.  
C-10579**, dated the 2nd day of May, 1995

TO: CBS CANADA CO.  
11 Stanwix Street  
Pittsburgh, Pennsylvania  
15222-1384  
U.S.A.  
  
**Attention: Julie Forsythe**  
**Administrator and Employer of the**  
**Westinghouse Canada Inc. Pension Plan**

**ORDER**

ON the 2nd day of May, 1995, the Superintendent of  
Pensions issued a **Notice of Proposal to Make an Order**  
pursuant to subsection 69(1) of the Pension Benefits  
Act, R.S.O. 1990, c.P.8 (the "Act"), to the  
Administrator and Employer to wind up in part the  
**Westinghouse Canada Inc. Pension Plan, Registration  
No. C-10579** (the "Notice").

ON May 31, 1995, counsel for Westinghouse Canada  
Inc. delivered notice in writing requiring a hearing to  
the Pension Commission of Ontario (the  
"Commission") with respect to the Notice.

ON September 19, 1995, counsel for Westinghouse  
Canada Inc. and counsel for the National Automobile,  
Aerospace and Agricultural Canada filed an agreement  
with the Commission, in which they agreed to adjourn  
the proceeding *sine die*.

ON September 25, 1995, counsel for the  
Superintendent of Pensions (the "Superintendent")  
filed a letter with the Commission which indicated

that the Superintendent did not oppose adjourning the  
proceeding *sine die*.

ON September 28, 1995, the Commission adjourned  
the proceeding *sine die*.

ON June 25, 1998, CBS Canada Co. was incorporated  
as a corporation under the laws of Nova Scotia; and in  
August of 1998, Westinghouse Canada Inc. transferred  
certain assets including the Westinghouse Canada Inc.  
Pension Plan to CBS Canada Co.

ON September 16, 1998, the Commission issued a  
Notice of Pre-Hearing Conference scheduling the pre-  
hearing conference for January 27, 1999.

ON December 3, 1998, counsel for Westinghouse  
Canada Inc. (now CBS Canada Co.) *withdrew* its  
request for hearing.

NO other Notice requiring a hearing was delivered to  
the Commission within the time prescribed by  
subsection 89(6).

IT IS THEREFORE HEREBY ORDERED THAT  
**THE Westinghouse Canada Inc. Pension Plan,  
Registration No. C-10579** be wound up in part  
effective June 30, 1991 in respect of those members  
and former members of the Plan who became  
employees of Asea Brown Boveri Inc. ("ABB")  
pursuant to an Asset Purchase Agreement dated as of  
February 14, 1989 between Westinghouse Canada Inc.,  
Transelectrix Technology Inc., and ABB, and who  
ceased to be employed by ABB as a result of the  
discontinuance of its plant on Beach Road in  
Hamilton, Ontario (the "Beach Road plant") on or  
about June 30, 1991, for the following reasons:

1. CBS Canada Co., formerly Westinghouse Canada  
Inc. ("Westinghouse") is the employer and  
administrator of the Plan.
2. By asset transfer agreement dated as of December  
29, 1986 (the "1986 agreement"), Westinghouse  
sold the assets of its Power Transformer business  
carried on at the Beach Road plant. The  
purchaser was 153703 Canada Inc., the name of



- which was subsequently changed to Transeletrix Technology Inc. ("TTI"). Westinghouse was a shareholder of TTI.
3. The 1986 agreement closed on or about December 31, 1986. As of the closing date, certain Westinghouse employees who were members of the Plan became employees of TTI. Pursuant to the 1986 agreement, Westinghouse was responsible for providing the accrued benefits for members of the Plan who became employees of TTI up to the closing date. TTI established a pension plan (the "TTI" Plan) for its employees in respect of service on and after January 1, 1987.
  4. Pursuant to the 1989 Agreement referred to above, ABB purchased the assets of the Beach Road plan effective on or about June 23, 1989. As a result of the transaction, certain TTI employees became employees of ABB (the "Transferred Employees"). Pursuant to the 1989 agreement, TTI was responsible for providing the accrued benefits of the Transferred Employees under TTI's pension plan up to the closing date of the 1989 agreement and ABB was responsible for pension benefits of the Transferred Employees accruing from and after the closing date of the 1989 agreement.
  5. Pursuant to section 29 of the Pension Benefits Act, R.S.O. 1980, c.373, as amended and section 80 of the Pension Benefits Act, R.S.O. 1990, c.P.8 (the "Act"), the employment by Westinghouse of the Transferred Employees is deemed not to be terminated by reason of the 1987 agreement or the 1989 agreement.
  6. On or about June 30, 1991, ABB closed the Beach Road plant. The TTI Plan was amended to provide that, effective June 23, 1989, ABB replaced TTI as the employer of the TTI Plan. ABB partially wound up the TTI Plan in respect of those employees, including Transferred Employees, whose employment with ABB was terminated as a result of the discontinuance of the Beach Road plant.
  7. Westinghouse ceased to contribute to the plan in respect of the Transferred Employees on or about the closing date of the 1986 agreement, within the meaning of clause 69(1)(a) of the Act.
  8. A significant number of Transferred Employees ceased to be employed by ABB and Westinghouse as a result of the discontinuance of ABB's Beach Road plant, within the meaning of clause 69(1)(d) of the Act.
  9. All or a significant portion of the business carried on by ABB at the Beach Road plant has been discontinued, within the meaning of clause 69(1)(e) of the Act.
  10. Such further and other reasons as may come to my attention.
- PURSUANT TO** subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:
- National Automobile, Aerospace and  
Agricultural Implement Workers Union of Canada  
(CAW - Canada)  
205 Placer Court  
North York, Ontario M2H 3H9  
Attention: Mr. Dick Barry, CAW-UE  
Coordinator  
Union
- All members and former members who became employees of ABB pursuant to the Asset Purchase Agreement dated as of June 23, 1989 between TTI and ABB, and who ceased to be employed by ABB as a result of its closure of the plant on Beach Road in Hamilton, Ontario, on or about June 30, 1991.
- DATED** at North York, Ontario, this 13th day of May, 1999.
- Dina Palozzi  
Superintendent & CEO,  
Financial Services Commission of Ontario



*Westinghouse Canada Inc. Pension Plan,  
Registration No. C-10579*

IN THE MATTER OF the Pension Benefits Act,  
R.S.O. 1990, c.P.8;

AND IN THE MATTER OF a Proposal of the  
Superintendent of Pensions to Make an Order  
pursuant to section 69 of the Pension Benefits Act,  
R.S.O. 1990, c.P.8 respecting the **Westinghouse  
Canada Inc. Pension Plan, Registration No.  
C-10579**, dated the 2nd day of May, 1995;

TO: CBS CANADA CO.  
11 Stanwix Street  
Pittsburgh, Pennsylvania  
15222-1384  
U.S.A.  
Attention: Julie Forsythe  
Administrator and Employer of the  
Westinghouse Canada Inc. Pension Plan

**ORDER**

ON the 2nd day of May, 1995, the Superintendent of  
Pensions issued a **Notice of Proposal to Make an  
Order** pursuant to subsection 69(1) of the Pension  
Benefits Act, R.S.O. 1990, c.P.8 (the "Act"), to the  
Administrator and Employer to wind up in part the  
**Westinghouse Canada Inc. Pension Plan,  
Registration No. C-10579** (the "Notice").

ON May 31, 1995, counsel for Westinghouse Canada Inc.  
delivered notice in writing requiring a hearing to the Pension  
Commission of Ontario (the "Commission") with respect to  
the Notice.

ON September 19, 1995, counsel for Westinghouse Canada  
Inc. and counsel for the National Automobile, Aerospace and  
Agricultural Implement Workers Union of Canada filed an  
agreement with the Commission, in which they agreed to  
adjourn the proceeding *sine die*.

ON September 25, 1995, counsel for the Superintendent of  
Pensions (the "Superintendent") filed a letter with the  
Commission which indicated that the Superintendent did not  
oppose adjourning the proceeding *sine die*.

ON September 28, 1995, the Commission adjourned  
the proceeding *sine die*.

ON June 25, 1998, CBS Canada Co. was incorporated  
as a corporation under the laws of Nova Scotia; and in  
August of 1998, Westinghouse Canada Inc. transferred  
certain assets including the Westinghouse Canada Inc.  
Pension Plan to CBS Canada Co.

ON September 16, 1998, the Commission issued a  
Notice of Pre-Hearing Conference scheduling the pre-  
hearing conference for January 27, 1999.

ON December 3, 1998, counsel for Westinghouse  
Canada Inc. (now CBS Canada Co.) withdrew its  
request for a hearing.

NO other Notice requiring a hearing was delivered to  
the Commission within the time prescribed by  
subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the  
**Westinghouse Canada Inc. Pension Plan, Registration  
No. C-10579** be wound up in part effective October 1,  
1992 in respect of those members and former members  
of the Plan who became employees of Asea Brown  
Boveri Inc. ("ABB") pursuant to an Asset Purchase  
Agreement dated as of February 14, 1989 between  
Westinghouse Canada Inc., Transelectrix Technology  
Inc., and ABB, and who ceased to be employed by  
ABB as a result of the discontinuance of part of its  
business at its London, Ontario division on or about  
October 1, 1992, for the following reasons:

1. CBS Canada Co., formerly Westinghouse Canada  
Inc. ("Westinghouse") is the employer and  
administrator of the Plan.
2. Pursuant to the 1989 agreement referred to above,  
certain Westinghouse employees who were members  
of the Plan became employees of ABB (the  
"Transferred Employees"). Westinghouse is  
responsible for providing the accrued benefits of the  
Transferred Employees up to the effective date of  
the sale under the Plan. ABB established a pension  
plan for the Transferred Employees in respect of  
service on and after the effective date of the sale.





3. Pursuant to section 80 of the Pension Benefits Act, R.S.O. 1990, c.P.8 (the "Act"), the employment of the Transferred Employees by Westinghouse is deemed not to be terminated by reason of the 1989 agreement.
4. On or about October 1, 1992, ABB discontinued its London division. ABB partially wound up its pension plan in respect of those employees, including Transferred Employees, whose employment with ABB was terminated as a result of the discontinuance of the London division.
5. Westinghouse ceased to contribute to the Plan in respect of the Transferred Employees on or about the effective date of the sale to ABB, within the meaning of clause 69(1)(a) of the Act.
6. A significant number of Transferred Employees ceased to be employed by ABB and Westinghouse as a result of the discontinuance of ABB's London division, within the meaning of clause 69(1)(d) of the Act.
7. All or a significant portion of the business carried on by ABB's London division has been discontinued, within the meaning of clause 69(1)(e) of the Act.
8. Such further and other reasons as may come to my attention.

**PURSUANT TO** subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

National Automobile, Aerospace and  
Agricultural Implement Workers Union of Canada  
(CAW - Canada)

205 Placer Court  
North York, Ontario  
M2H 3H9

Attention: Mr. Dick Barry,  
CAW-UE Coordinator  
Union

All members and former members of the Plan who became employees of ABB pursuant to an Asset Purchase Agreement dated as of February 14, 1989 between Westinghouse Canada Inc., Transeletrix Technology Inc., and ABB, and who ceased to be employed by ABB as a result of the discontinuance of part of its business at its London, Ontario division on or about October 1, 1992.

**DATED** at North York, Ontario, this 13th day of May, 1999.

Dina Palozzi  
Superintendent & CEO  
Financial Services Commission of Ontario



*Westinghouse Canada Inc. Pension Plan*  
No. C-10579

IN THE MATTER OF the Pension Benefits Act,  
R.S.O. 1990, c.P.8;

AND IN THE MATTER OF a Proposal of the  
Superintendent of Pensions to Make an Order  
pursuant to section 69 of the Pension Benefits Act,  
R.S.O. 1990, c.P.8, respecting the **Westinghouse  
Canada Inc. Pension Plan, Registration**  
No. C-10579, dated the 2nd day of May, 1995;

TO: CBS CANADA CO.  
11 Stanwix Street  
Pittsburgh, Pennsylvania  
15222-1384  
U.S.A.  
Attention: Julie Forsythe  
Administrator and Employer of the  
Westinghouse Canada Inc. Pension Plan

**ORDER**

ON the 2nd day of May, 1995, the Superintendent of  
Pensions issued a **Notice of Proposal to Make an  
Order** pursuant to subsection 69(1) of the Pension  
Benefits Act, R.S.O. 1990, c.P.8 (the "Act"), to the  
Administrator and Employer to wind up in part the  
**Westinghouse Canada Inc. Pension Plan,**  
**Registration No. C-10579** (the "Notice").

ON May 31, 1995, counsel for Westinghouse Canada  
Inc. delivered notice in writing requiring a hearing to  
the Pension Commission of Ontario (the  
"Commission") with respect to the Notice.

ON September 19, 1995, counsel for Westinghouse  
Canada Inc. and counsel for the National Automobile,  
Aerospace and Agricultural Implement Workers Union  
of Canada filed an agreement with the Commission, in  
which they agreed to adjourn the proceeding *sine die*.

ON September 25, 1995, counsel for the  
Superintendent of Pensions (the "Superintendent")  
filed a letter with the Commission which indicated  
that the Superintendent did not oppose adjourning the  
proceeding *sine die*.

ON September 28, 1995, the Commission adjourned  
the proceeding *sine die*.

ON June 25, 1998, CBS Canada Co. was incorporated  
as a corporation under the laws of Nova Scotia; and in  
August of 1998, Westinghouse Canada Inc. transferred  
certain assets which included the Westinghouse  
Canada Inc. Pension Plan to CBS Canada Co.

ON September 16, 1998, the Commission issued a  
Notice of Pre-Hearing Conference scheduling the pre-  
hearing conference for January 27, 1999.

ON December 3, 1998, counsel for Westinghouse  
Canada Inc. (now CBS Canada Co.) withdrew its  
request for a hearing.

NO other Notice requiring a hearing was delivered to  
the Commission within the time prescribed by  
subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the  
**Westinghouse Canada Inc. Pension Plan,**  
**Registration No. C-10579** be wound up in part  
effective August 11, 1994 in respect of those members  
and former members of the Plan who became  
employees of Asea Brown Boveri Inc. ("ABB")  
pursuant to an Asset Purchase Agreement dated as of  
February 14, 1989 between Westinghouse Canada Inc.,  
Transtech Technology Inc., and ABB, and who  
ceased to be employed by ABB as a result of the  
discontinuance of part of its business at its Burlington,  
Ontario division on or about August 11, 1994, for the  
following reasons:

1. CBS Canada Co., formerly Westinghouse Canada  
Inc. ("Westinghouse") is the employer and  
administrator of the Plan.
2. Pursuant to the 1989 agreement referred to above,  
certain Westinghouse employees who were members  
of the Plan became employees of ABB (the  
"Transferred Employees"). Westinghouse is  
responsible for providing the accrued benefits of the  
Transferred Employees up to the effective date of  
the sale under the Plan. ABB established a pension



plan for the Transferred Employees in respect of service on and after the effective date of the sale.

3. Pursuant to section 80 of the Pension Benefits Act, R.S.O. 1990, c.P.8 (the "Act"), the employment of the Transferred Employees by Westinghouse is deemed not to be terminated by reason of the 1989 agreement.
4. On or about August 11, 1994, ABB discontinued part of its business at its Burlington division. Effective August 11, 1994, ABB issued a notice of proposal to wind up its pension plan in full with respect to those employees, including Transferred Employees, whose employment with ABB was terminated as a result of the discontinuance of part of its business at the Burlington division.
5. Westinghouse ceased to contribute to the Plan in respect of the Transferred Employees on or about the effective date of the sale to ABB, within the meaning of clause 69(1)(a) of the Act.
6. A significant number of Transferred Employees ceased to be employed by ABB and Westinghouse as a result of the discontinuance of part of ABB's business at ABB's Burlington division, within the meaning of clause 69(1)(d) of the Act.
7. A significant portion of the business carried on by ABB at its Burlington division has been discontinued, within the meaning of clause 69(1)(e) of the Act.
8. Such further and other reasons as may come to my attention.

**PURSUANT TO** subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

National Automobile, Aerospace and Agricultural  
Implement

Workers Union of Canada (CAW - Canada)

205 Placer Court

North York, Ontario

M2H 3H9

Attention: Mr. Dick Barry,  
CAW-UE Coordinator  
**Union**

All members and former members of the Plan who became employees of ABB pursuant to an Asset Purchase Agreement dated as of February 14, 1989 between Westinghouse Canada Inc., Transelectrix Technology Inc., and ABB, and who ceased to be employed by ABB as a result of the discontinuance of part of its business at its Burlington, Ontario division on or about August 11, 1994.

**DATED** at North York, Ontario, this 13th day of May, 1999.

Dina Palozzi

Superintendent & CEO,

Financial Services Commission of Ontario



*Westinghouse Canada Inc. Consolidated Pension Plan, Registration No. C-9356,*

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c.P.8;

**AND IN THE MATTER OF** a Proposal of the Superintendent of Pensions to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, respecting the **Westinghouse Canada Inc. Consolidated Pension Plan, Registration No. C-9356**, dated the 23rd day of August, 1993;

**TO:** CBS CANADA CO.  
11 Stanwix Street  
Pittsburgh, Pennsylvania  
15222-1384  
U.S.A.  
Attention: Julie Forsythe  
**Administrator and Employer of the  
Westinghouse Canada Inc. Pension Plan**

### ORDER

ON the 23rd day of August, 1993, the Superintendent of Pensions issued a **Notice of Proposal to Make an Order** pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8 (the "Act"), to the Administrator and Employer to wind up in part the **Westinghouse Canada Consolidated Pension Plan, Registration No. C-9356** (the "Notice").

ON September 17, 1993, counsel for Westinghouse Canada Inc. delivered notice in writing requiring a hearing to the Pension Commission of Ontario (the "Commission") with respect to the Notice.

ON the 10th day of November, 1994, the Commission made an Order adjourning the hearing *sine die* on terms.

ON June 25, 1998, CBS Canada Co. was incorporated as a corporation under the laws of Nova Scotia; and in August of 1998, Westinghouse Canada Inc. transferred certain assets which included the Westinghouse Canada Inc. Consolidated Pension Plan to CBS Canada Co.

ON December 3, 1998, counsel for Westinghouse Canada Inc. (now CBS Canada Co.) withdrew its request for hearing with the Pension Commission of Ontario.

NO other Notice requiring a hearing was delivered to the Commission within the time prescribed by subsection 89(6) of the Act.

**IT IS THEREFORE HEREBY ORDERED** that the **Westinghouse Canada Inc. Consolidated Pension Plan, Registration No. C-9356** be wound up in part in respect of those members and former members of the Plan who became employees of Asea Brown Boveri Inc. ("ABB") pursuant to an Asset Purchase Agreement dated as of February 14, 1989 between Westinghouse Canada Inc., Tranelectrix Technology Inc., and ABB, and who ceased to be employed by ABB as a result of the discontinuance of its London, Ontario division on or about October 1, 1992, for the following reasons:

1. CBS Canada Co., formerly Westinghouse Canada Inc. ("Westinghouse") is the employer and administrator of the Plan.
2. Pursuant to the Agreement referred to above, certain Westinghouse employees who were members of the Plan became employees of ABB (the "Transferred Employees"). Westinghouse is responsible for providing the accrued benefits of the Transferred Employees up to the effective date of the sale under the Plan. ABB established a pension plan for the Transferred Employees in respect of service on and after the effective date of the sale.
3. Pursuant to section 80 of the *Pension Benefits Act*, the employment of the Transferred Employees by Westinghouse is deemed not to be terminated by reason of the Agreement.
4. On or about October 1, 1992, ABB closed its London division and partially wound up its pension plan in respect of those employees, including





Transferred Employees, whose employment with ABB was terminated as a result of the closure.

5. Westinghouse ceased to contribute to the Plan in respect of the Transferred Employees on or about the effective date of the sale to ABB, within the meaning of clause 69(1)(a) of the Act.
6. A significant number of Transferred Employees ceased to be employed by ABB and Westinghouse as a result of the discontinuance of ABB's London division, within the meaning of clause 69(1)(d) of the Act.
7. All or a significant portion of the business carried on by ABB at its London division has been discontinued, within the meaning of clause 69(1)(f) of the Act.
8. Such further and other reasons as may come to my attention.

**PURSUANT TO** subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

All members and former members of the Plan who became employees of Asea Brown Boveri Inc. ("ABB") pursuant to an Asset Purchase Agreement dated as of February 14, 1989 between Westinghouse Canada Inc., Transelectrix Technology Inc., and ABB, as amended, and who ceased to be employed by ABB as a result of the discontinuance of its London, Ontario division on or about October 1, 1992.

**DATED** at North York, Ontario, this 13th day of May, 1999.

Dina Palozzi  
Superintendent & CEO,  
Financial Services Commission of Ontario



*The Canada Machinery Corporation Salaried  
Employees Pension Plan, Registration No. 0910836  
(previously C-14249)*

IN THE MATTER OF the Pension Benefits Act,  
R.S.O. 1990, c. P.8; as amended by the Financial Services  
Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to Make an Order  
pursuant to section 69 of the Pension Benefits Act, R.S.O.  
1990, c. P.8, as amended by the Financial Services  
Commission of Ontario Act, 1997, S.O. 1997, c.28,  
respecting **The Canada Machinery Corporation Salaried  
Employees Pension Plan, Registration No. 0910836  
(previously C-14249)**, dated the 26th day of March, 1999;

TO: Ernst & Young Inc.  
Ernst & Young Tower  
Toronto-Dominion Centre  
P.O. Box 251  
Toronto, ON  
M5K 1J7  
  
Attention: Brian Denega  
Senior Vice-President  
**Administrator of The Canada Machinery  
Corporation Salaried Employees Pension  
Plan**

AND TO: Canada Machinery Corporation  
81 Curlew Drive  
North York, ON  
M3A 2P8  
  
Attention: J.L. Campbell  
President  
**Employer**

**ORDER**

ON the 1st day of April, 1999, I issued a **Notice of  
Proposal to make an Order** dated the 26th day of  
March, 1999, pursuant to subsection 69(1) of the  
Pension Benefits Act, R.S.O. 1990, c. P.8, as amended  
by the Financial Services Commission of Ontario Act,  
1997, S.O. 1997, c.28 (the "Act"), to the

Administrator and to the Employer to wind up in  
whole **The Canada Machinery Corporation Salaried  
Employees Pension Plan, Registration No. 0910836  
(previously C-14249)**.

NO Notice requiring a hearing was delivered to the  
Financial Services Tribunal, (the "Tribunal"), by the  
Administrator and/or the Employer within the time  
prescribed by subsection 89(6) of the Act.

**IT IS THEREFORE HEREBY ORDERED** that **The  
Canada Machinery Corporation Salaried Employees  
Pension Plan, Registration No. 0910836 (previously  
C-14249)** be wound up in whole, effective December  
31, 1988, for the following reason:

1. There was a cessation or suspension of employer  
contributions to the pension fund.

**DATED** at North York, Ontario this 26th day of  
May, 1999.

K. David Gordon  
Director  
Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services



***Retirement Plan for Salaried Employees of Cooper Canada - Plan A, Registration No. 240622 (formerly C-5975)***

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order Requiring the Wind Up in Part of the **Retirement Plan for Salaried Employees of Cooper Canada - Plan A, Registration No. 240622 (formerly C-5975)**;

TO: COOPER INDUSTRIES  
(CANADA) INC.  
P.O. Box 4446  
Houston, Texas  
U.S.A. 77210  
  
Attention: Mr. Donald P. Ingols  
Vice-President  
  
**Employer and Administrator of the  
Retirement Plan for Salaried Employees  
of Cooper Canada - Plan A**

**ORDER**

ON the 2nd day of July, 1998, I issued a **Notice of Proposal to Make an Order** pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act"), to the Administrator and Employer to wind up in part the Retirement Plan for Salaried Employees of Cooper Canada, **Registration No. 240622 (formerly C-5975)** (the "Notice").

ON the 6th day of August, 1998, counsel for Cooper Industries (Canada) Inc. delivered notice in writing requiring a hearing to the Financial Services Tribunal (the "Tribunal") with respect to the Notice.

ON the 26th day of October, 1998, the Tribunal conducted a pre-hearing conference.

ON March 3, 1999, counsel for Cooper Industries (Canada) Inc. withdrew its request for hearing with the Tribunal.

NO other Notice requiring a hearing was delivered to the Tribunal within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the **Retirement Plan for Salaried Employees of Cooper Canada, Registration No. 240622 (formerly C-5975)** be wound up in part in respect of those members and former members of the Plan who were employed by Cooper Industries (Canada) Inc. ("Cooper") at its Port Hope location and who ceased to be employed by Cooper effective from March 26, 1991 to March 30, 1992, or the date the last Plan member employed by Cooper at its Port Hope location ceased employment, whichever is later, as a result of:

- (i) the discontinuance of part of the business of Cooper;
- (ii) the reorganization of the business of Cooper; or
- (iii) the discontinuance of all or a significant portion of the business carried on by Cooper at its Port Hope, Ontario location, for the following reasons:

1. Cooper is the employer and administrator of the Plan.
2. On March 26, 1991, Cooper announced to its employees that it intended to close its manufacturing plant in Port Hope, Ontario.
3. On March 30, 1992, all of the business carried on by Cooper at its Port Hope location was discontinued and the plant was closed.
4. A significant number of members of the Plan ceased to be employed by Cooper as a result of the discontinuance of all or part of its business between March 26, 1991 and March 30, 1992 or the date the last Plan member employed by Cooper at its Port Hope location ceased employment, whichever is later, within the meaning of clause 69(1)(d) of the Act.



5. A significant number of members of the Plan ceased to be employed by Cooper as a result of the reorganization of its business between March 26, 1991 and March 30, 1992 or the date the last Plan member employed by Cooper at its Port Hope location ceased employment, whichever is later, within the meaning of clause 69(1)(d) of the Act.
6. All or a significant portion of the business carried on by Cooper at its Port Hope, Ontario location was discontinued between March 26, 1991 and March 30, 1992 or the date the last Plan member employed by Cooper at its Port Hope location ceased employment, whichever is later, within the meaning of clause 69(1)(d) of the Act.
7. Such further and other reasons that may come to my attention.

**IT IS FURTHER HEREBY ORDERED** that the **Administrator** file a **partial wind up report** with the **Superintendent of Financial Services** within 4 months and 21 days from the date this Order is served upon the employer and administrator.

**PURSUANT TO** subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

All members and former members of the Plan who were employed by Cooper Industries (Canada) Inc. at its Port Hope, Ontario location and who ceased to be employed by Cooper effective from March 26, 1991 to March 30, 1992 or the date the last Plan member employed by Cooper at its Port Hope location ceased employment, whichever is later.

**DATED** at Toronto, Ontario, this 22nd day of June, 1999.

Dina Palozzi  
Superintendent & CEO,  
Financial Services Commission of Ontario





*Pension Plan for Salaried Employees of Frink Environmental & Hamilton Gear Inc., Registration No. 337691 (previously C-10218)*

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8; as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28, respecting the **Pension Plan for Salaried Employees of Frink Environmental & Hamilton Gear Inc., Registration No. 337691 (previously C-10218)**, dated the 10th day of May, 1999;

TO: Price Waterhouse Limited  
Suite 1100  
One Robert Speck Parkway  
Mississauga, ON  
L4Z 3M3  
Attention: Ms. Patti Hamilton  
Administrator  
**Administrator of the Pension Plan for Salaried Employees of Frink Environmental & Hamilton Gear Inc.**

AND TO: Frink Environmental Inc.  
c/o 66 Wellington Street West, Suite 2901  
Toronto Dominion Bank Tower, TD Centre  
Toronto, ON M5K 1G8  
Attention: Mr. David Lowry  
Eastern Steel Products Ltd.  
c/o 66 Wellington Street West, Suite 2901  
Toronto Dominion Bank Tower, TD Centre  
Toronto, ON M5K 1G8  
Attention: Mr. David Lowry

Hamilton Gear Inc.  
c/o 66 Wellington Street West, Suite 2901  
Toronto Dominion Bank Tower, TD Centre  
Toronto, ON M5K 1G8  
Attention: Mr. David Lowry  
**Employers**

**ORDER**

ON the 12th day of May, 1999, I issued a **Notice of Proposal to make an Order** dated the 10th day of May, 1999, pursuant to subsection 69(1) of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act"), to the Administrator and to the Employers to wind up in whole the **Pension Plan for Salaried Employees of Frink Environmental & Hamilton Gear Inc., Registration No. 337691 (previously C-10218)**.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the "Tribunal"), by the Administrator and/or the Employers within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the Pension Plan for Salaried Employees of Frink Environmental & Hamilton Gear Inc., Registration No. 337691 (previously C-10218) be wound up in whole, effective the 20th day of September, 1994, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employers are bankrupt within the meaning of the Bankruptcy Act (Canada).
3. A significant number of members of the plan ceased to be employed by the employers as a result of the discontinuance of all or part of the business of the employers or as a result of reorganization of the business of the employers.
4. All or a significant portion of the business carried on by the employers at a specific location was discontinued.



PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Ernst & Young Inc.  
Suite 600, 175 Commerce Valley Drive West  
Thornhill, ON  
L3T 7P6

Attention: Mr. Joseph Pernica  
Senior Vice-President  
**Receiver and Trustee in Bankruptcy**

DATED at Toronto, Ontario this 9th day of July, 1999.

K. David Gordon  
Director  
Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services



## Appointments of Administrators - Section 71 of the PBA

The Superintendent of Financial Services appointed third party administrators pursuant to subsection 71(1) of the PBA to wind up the plan in whole or in part.

- 1) Arthur Andersen Inc. appointed as administrator of Alumiprime Windows Limited Hourly Employees Pension Plan, PN C1021005, effective July 9, 1999
- 2) Price Waterhouse appointed as administrator of JPE Canada Inc. Employees Pension Plan, PN C0694570, effective June 30, 1999
- 3) Manufacturers Life appointed as administrator of Tee-Com Electronics Inc. Employees Pension Plan, PN C9050750, effective May 5, 1999
- 4) Canada Life appointed as administrator of C.J. Power Automatic Tools Inc. Employees Pension Plan, PN 0579987, effective March 23, 1999

## Consents to refunds of employer overpayments - Subsection 78(4) of the PBA

*Pension Plan for Employees of Wm. H. McGee & Co. of Canada Ltd., Registration No. 328344*

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8; as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order Consenting to a payment out of the **Pension Plan for Employees of Wm. H. McGee & Co. of Canada Ltd., Registration No. 328344;**

TO: Wm. H. McGee & Co. of Canada Ltd.  
1200 - 48 Yonge Street  
Toronto, Ontario  
M5E 1G6  
Attention: Debra J. Seminoff  
Vice-President & Treasurer  
Employer and Administrator of the  
Pension Plan for Employees of Wm. H.  
McGee & Co. of Canada Ltd.

## ORDER

WHEREAS on January 14th, 1999 the Superintendent sent to those persons whose interest may be affected by this order, by first class mail, a **Notice of Proposal to make an Order** consenting to the payment out of the Pension Plan for Employees of Wm. H. McGee & Co. of Canada Ltd., Registration No. 328344 (the "Plan") of the sum of \$43,850, pursuant to subsection 78(4) of the Pension Benefits Act, R.S.O. 1990, c. p.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act").

AND

WHEREAS, under section 112 of the Act, notice is deemed to have been given of that order on the seventh day after the mailing of a letter containing such notice,

AND

WHEREAS the thirty day time period allowed for a request a request for a hearing in this matter, under sub-section 89(6) of the Act, has lapsed, and the Registrar of the Financial Services Tribunal has confirmed that no request for a hearing has been received.

NOW THEREFORE TAKE NOTICE that the Superintendent hereby consents to the payment out of the Pension Plan for Employees of Wm. H. McGee & Co. of Canada Ltd., Registration No. 328344 (the "Plan") of the sum of \$43,850.

## I MAKE THE ORDER FOR THE FOLLOWING REASONS:

1. Wm. H. McGee & Co. of Canada Ltd. (the Employer) is the sponsor of the Pension Plan for Employees of Wm. H. McGee & Co. of Canada Ltd., registration #328344.



2. A Valuation Report in connection with the Pension Plan, effective December 31, 1997 was made in July of 1998 and thereafter the Employer determined that the payments made into the Pension Plan in 1998 were overpayments.
3. The Employer applied to the Superintendent for consent to a refund of the overpayments made to the Pension Plan in 1998 by the Employer. Notice of that application was given to those persons whose interest may be affected by this proposal. The application appears to comply with sub-section 78(4) of the Act.

**DATED** at Toronto, Ontario this 1st day of March, 1999.

K. David Gordon  
Director (Acting),  
Pension Plans Branch  
by delegated authority from  
Dina Palozzi,  
Superintendent of Financial Services





**Hospitals of Ontario Pension Plan, Registration No. 346007**

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order Consenting to a payment out of the **Hospitals of Ontario Pension Plan, Registration No. 346007**;

TO: Board of Trustees of Hospitals of Ontario Pension Plan  
Administrative Services  
1 Toronto Street, Suite 1400  
Toronto, Ontario  
M5C 3B2  
Attention: Ron Laffin  
Policy Analyst  
**Administrator of the Hospitals of Ontario Pension Plan (the "Administrator")**

**ORDER**

WHEREAS on February 17th, 1999 the Superintendent sent to the Board of Trustees of Hospitals of Ontario Pension Plan by first class mail, a **Notice of Proposal to Make an Order**:

- (1) pursuant to subsection 78(4) of the Act to consent to an application for a refund of \$40,659.57 to Pembroke Civic Hospital, a participating employer under the **Hospitals of Ontario Pension Plan, Registration No. 346007** (the "Plan"); and
- (2) pursuant to section 105 of the Act to extend the time limit, specified under subsection 78(4) of the Act, for filing the application; and
- (3) to waive the requirements that a formal application be made and pursuant to subsection 112(3) of the Act, to require notice to be given to Plan members prior to granting consent, by requiring the administrator to serve a copy of Notice of Proposal on the trade unions which represent the majority of the Plan members.

AND

WHEREAS, under section 112 of the Pension Benefits Act (the "Act"), notice is deemed to have been given of that Notice of Proposal to Make an Order on the seventh day after the mailing of a letter containing such notice,

AND

WHEREAS the thirty day time period allowed for a request for a hearing in this matter, under sub- section 89(6) of the Act, has lapsed, and the Registrar of the Financial Services Tribunal has confirmed that no request for a hearing has been received.

AND

WHEREAS the Administrator has confirmed in writing that a copy of the Notice of Proposal was served on the trade unions which represent the majority of the Plan members.

NOW THEREFORE TAKE NOTICE that the Superintendent hereby:

- i) consents, pursuant to subsection 78(4) of the Act to the application for a refund of \$40,659.57 to Pembroke Civic Hospital, a participating employer under the **Hospitals of Ontario Pension Plan, Registration No. 346007**;
- ii) pursuant to section 105 of the Act, extends the time limit specified under subsection 78(4) of the Act for filing the application; and
- iii) waives the requirements that a formal application be made.

**THIS ORDER IS MADE FOR THE FOLLOWING REASONS:**

1. The Administrator of the Plan has represented by letter dated November 18, 1998 that an overpayment to the Pension Fund of the Plan was made by Pembroke Civic Hospital, a participating employer in the Plan in 1997 and 1998. The Administrator has represented that an overpayment of \$38,047.29 occurred in 1997 and an overpayment of \$2,612.28 occurred in 1998. The



application is for a refund of \$40,659.57 which represents the total of the overpayments that occurred in 1997 and 1998 (the "Overpayments".)

2. The Administrator of the Plan has represented that the Overpayments were discovered in a financial reconciliation which occurred when the Pembroke Civic Hospital ceased to participate in the Plan. Since the error for the fiscal year 1997 was not discovered in the 1997 fiscal year, an application for a refund of the overpayment that occurred in 1997 could not be made in 1997.
3. The quantum of the Overpayments is insignificant when compared with the assets of the Pension Fund and with the surplus on an ongoing basis in the Pension Fund.
4. Since the Plan members are so numerous and located in so many different locations across the province, it is reasonable to authorize the giving of notice of the application by requiring the administrator to serve the trade unions which represent the majority of the Plan members with a copy of the Notice of Proposal.

**DATED** at Toronto, Ontario this 7th day of June, 1999.

K. David Gordon

Director

Pension Plans Branch

by delegated authority from

Dina Palozzi

Superintendent of Financial Services



**Declaration that the Pension Benefits  
Guarantee Fund applies to pension plans -  
Subsection 83(1) of the PBA**

*Pension Plan for Hourly - Rated Employees of  
Barrymore Carpet Division of Carpita Corporation,  
Registration Number C-14852*

IN THE MATTER OF the Pension Benefits Act,  
R.S.O. 1990, c. P.8, as amended by the Financial Services  
Commission of Ontario Act, 1997, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the  
Superintendent of Financial Services to make a  
Declaration under section 83 of the Pension Benefits  
Act, R.S.O. 1990, c. P.8, as amended by the Financial  
Services Commission of Ontario Act, 1997, S.O. 1997,  
c. 28, respecting the **Pension Plan for Hourly - Rated  
Employees of Barrymore Carpet Division of Carpita  
Corporation, Registration Number C-14852;**

**TO:** KPMG Inc.  
(formerly Peat Marwick Thorne Inc.)  
Suite 3300, Commerce Court West  
P.O. Box 31, Stn Commerce Court  
Toronto, ON  
M5L 1B2  
Attention: Michael Creber, Senior Vice  
President  
**Administrator, Pension Plan for Hourly  
- Rated Employees of Barrymore Carpet  
Division of Carpita Corporation,  
Registration Number C-14852**

**AND TO:** Ernst & Young Inc.  
P.O. Box 251, 22nd Floor  
Ernst & Young Tower  
Toronto Dominion Centre  
Toronto, ON  
M5K 1J7  
**Trustee in Bankruptcy**

**AND TO:** Amalgamated Clothing & Textile Workers  
Union AFL - C10, Local 1464  
(formerly Textile Processors, Service  
Trades, Health Care, Professional and  
Technical Employees International  
Union, Local 351)  
34 Madison Avenue  
Toronto, ON  
M5R 3N6  
**Union**

**AND TO:** Barrymore Carpet Division of  
Carpita Corporation  
7075 Ordan Drive, Unit A  
Mississauga, ON  
L5T 1T1  
Attention: Leslie MacTaggart  
Manager Human  
Resources/Payroll  
**Employer**

**DECLARATION**

**WHEREAS:**

1. The Pension Plan for Hourly - Rated Employees of Barrymore Carpet Division of Carpita Corporation, Registration Number C-14852 (the "Pension Plan") is registered under the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act"); and
2. The Superintendent of Financial Services ordered the Pension Plan wound up effective June 29, 1990; and
3. The Superintendent of Pensions appointed KPMG Inc., formerly Peat Marwick Thorne Inc. as the administrator ( the "Administrator") of the Pension Plan on September 13, 1990; and
4. A notice of proposal to make a declaration (the "Notice of Proposal") that the Pension Benefits



Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan was served by the Superintendent of Financial Services pursuant to section 89 of the Act on March 29, 1999; and

5. No written representations were received by the Financial Services Tribunal requesting a hearing within thirty days after service of the Notice of Proposal;

**NOW THEREFORE TAKE NOTICE** that the Superintendent of Financial Services declares pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

- (a) The wind up report filed by the Administrator indicates that the Wind Up Ratio (of assets to liabilities) of the Pension Plan is approximately 65%;
- (b) The employer under the Pension Plan is bankrupt and the Administrator has been informed by the Trustee in Bankruptcy that there are no funds available from the Estate of Barrymore Carpet Division of Carpita Corporation to make a payment to the Pension Plan.

**DATED** at North York, Ontario, the 28th day of May, 1999.

Dina Palozzi  
Superintendent of Financial Services





*Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923 (formerly C-101854)*

IN THE MATTER OF the Pension Benefits Act,  
R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O 1997, c. 28;

AND IN THE MATTER OF a Proposal by the  
Superintendent of Financial Services to make a  
Declaration under section 83 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 respecting the **Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923 (formerly C-101854);**

TO: Arthur Andersen Inc.  
P.O. Box 29  
Toronto-Dominion Centre  
1900-79 Wellington Street West  
Toronto, ON  
M5K 1H1  
Attention: David R. Kearney,  
**Administrator, Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923 (formerly C-101854)**

AND TO: PricewaterhouseCoopers Inc.  
275 Dundas Street, Suite 1500  
London, ON  
N6B 3L1  
Attention: Aldis Makouskis  
**Trustee in Bankruptcy of Epton Industries Inc.**

AND TO: United Steelworkers of America, Local 73  
(formerly United Rubber, Cork,  
Linoleum and Plastic Workers of  
America, Local 73)  
234 Eglinton Avenue East, 7th floor  
Toronto, ON  
M4P 1K7

Attention: Ken Dawson

Union

AND TO: Epton Industries Inc.  
521 King Street West  
Kitchener, ON  
N2G 1C5

Attention: Mr. Dennis Hall,  
Vice-President, Finance  
Employer

## DECLARATION

### WHEREAS:

1. The Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923 (formerly C-101854) (the "Pension Plan") is registered under the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act"); and
2. The Superintendent of Pensions ordered the Pension Plan wound up effective August 14, 1995; and
3. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator ( the "Administrator") of the Pension Plan on September 7, 1995; and
4. A notice of proposal to make a declaration (the "Notice of Proposal") that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan was served by the Superintendent of Financial Services pursuant to section 89 of the Act on March 11, 1999; and
5. No written representations were received by the Financial Services Tribunal requesting a hearing within thirty days after service of the Notice of Proposal;

NOW THEREFORE TAKE NOTICE that the Superintendent of Financial Services declares pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:



- (a) The wind up report filed by the Administrator indicates that the Wind Up Ratio (of assets to liabilities) of the Pension Plan is approximately 65%;
- (b) The employer under the Pension Plan is bankrupt and the Administrator has been informed by the Trustee in Bankruptcy that there are no funds available from the Estate of Epton Industries Inc. to make a payment to the Pension Plan.

**DATED** at North York, Ontario, the 28th day of May, 1999.

Dina Palozzi  
Superintendent of Financial Services



**Allocations of money from the Pension  
Benefits Guarantee Fund - Subsection 34(7)  
of Regulation 909**

*Pension Plan "A" for Full Time Salaried Employees  
Exclusive of Those Employees Who Are Members of  
A Bargaining Unit of Libbey-St. Clair Limited,  
Registration Number 0439802 (formerly C-15118)*

**IN THE MATTER OF** the Pension Benefits Act,  
R.S.O. 1990, c. P.8 as amended by the Financial Services  
Commission of Ontario Act, 1997, S.O. 1997, c.28;

**AND IN THE MATTER OF** a Declaration by the  
Pension Commission of Ontario under section 83 of the  
Pension Benefits Act, R.S.O. 1990, c. P.8, respecting  
**Pension Plan "A" for Full Time Salaried Employees  
Exclusive of Those Employees Who Are Members of  
A Bargaining Unit of Libbey-St. Clair Limited,  
Registration Number 0439802 (formerly C-15118);**

**TO:** Deloitte & Touche Inc.  
BCE Place  
181 Bay Street  
Suite 1400  
Toronto, ON M5J 2V1  
Attention: Mr. Bruce Bando, Senior Vice-  
President  
**Administrator, Pension Plan "A" for  
Full Time Salaried Employees Exclusive  
of Those Employees Who Are Members  
of A Bargaining Unit of Libbey-St. Clair  
Limited, Registration Number 0439802  
(formerly C-15118)**

**ALLOCATION**

**WHEREAS** on July 29, 1993 the Pension Commission  
of Ontario (the "Commission") declared, pursuant to  
sections 83 and 90 of the Pension Benefits Act, R.S.O.  
1990, c. P.8, that the Pension Benefits Guarantee Fund  
(the "Guarantee Fund") applies to Pension Plan "A" for  
Full Time Salaried Employees Exclusive of Those  
Employees Who Are Members of A Bargaining Unit of

Libbey-St. Clair Limited, Registration Number  
0439802 (formerly C-15118) (the "Pension Plan");

**AND WHEREAS** on July 29, 1993 the Commission  
made an interim allocation from the Guarantee Fund  
to the Pension Plan;

**NOW THEREFORE** the Superintendent shall  
allocate from the Guarantee Fund and pay to the  
Pension Plan, pursuant to subsection 34(7) of R.R.O.  
1990, Reg. 909 as amended, under the Pension Benefits  
Act, R.S.O. 1990, c.P.8 as amended by the Financial  
Services Commission of Ontario Act, 1997, S.O. 1997,  
c.28 (the "Regulation"), an amount not to exceed  
\$1,973,338 to provide, together with the Ontario assets,  
for the benefits determined in accordance with section  
34 of the Regulation. Any money allocated from the  
Guarantee Fund but not required to provide such  
benefits shall be returned to the Guarantee Fund.

**DATED** at North York, Ontario, this 15th day of  
March, 1999.

Dina Palozzi  
Superintendent of Financial Services



*Pension Plan “C” for Full-Time Hourly Employees Inclusive of Those Salaried Employees Who Are Members of A Bargaining Unit of Libbey-St. Clair Limited, Registration Number 0439794 (formerly C-15119)*

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Declaration by the Pension Commission of Ontario under section 83 of the Pension Benefits Act, R.S.O. 1990, c. P.8, respecting Pension Plan “C” for Full-Time Hourly Employees Inclusive of Those Salaried Employees Who Are Members of A Bargaining Unit of Libbey-St. Clair Limited, Registration Number 0439794 (formerly C-15119);

TO: Deloitte & Touche Inc.  
BCE Place  
181 Bay Street  
Suite 1400  
Toronto, ON M5J 2V1  
Attention: Mr. Bruce Bando, Senior  
Vice-President  
Administrator, Pension Plan “C” for  
Full-Time Hourly Employees Inclusive  
of Those Salaried Employees Who Are  
Members of A Bargaining Unit of  
Libbey-St. Clair Limited, Registration  
Number 0439794 (formerly C-15119)

#### ALLOCATION

WHEREAS on July 29, 1993 the Pension Commission of Ontario (the “Commission”) declared, pursuant to sections 83 and 90 of the Pension Benefits Act, R.S.O. 1990, c. P.8, that the Pension Benefits Guarantee Fund (the “Guarantee Fund”) applies to Pension Plan “C” for Full-Time Hourly Employees Inclusive of Those Salaried Employees Who Are Members of A Bargaining Unit of Libbey-St. Clair Limited, Registration Number 0439794 (formerly C-15119) (the “Pension Plan”);

AND WHEREAS on July 29, 1993 the Commission made an interim allocation from the Guarantee Fund to the Pension Plan;

NOW THEREFORE the Superintendent shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, as amended, under the Pension Benefits Act, R.S.O. 1990 c. P.8 as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the “Regulation”), an amount not to exceed \$12,988,406, to provide, together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 15th day of March, 1999.

Dina Palozzi  
Superintendent of Financial Services





*The Pension Plan for Salaried Employees of Carpita Corporation and Subsidiary and Affiliated Companies, Registration Number 0598425 (formerly C-15303)*

IN THE MATTER OF the Pension Benefits Act,  
R.S.O. 1990, c. P.8;

AND IN THE MATTER OF a Declaration by the Pension Commission of Ontario under section 83 of the Pension Benefits Act, R.S.O. 1990, c. P.8, respecting *The Pension Plan for Salaried Employees of Carpita Corporation and Subsidiary and Affiliated Companies, Registration Number 0598425 (formerly C-15303)*;

TO: KPMG Inc.  
Commerce Court West  
P.O. Box 31, Stn Commerce Court  
Toronto, ON  
M5L 1B2  
Attention: Mr. Michael Creber, Senior  
Vice-President  
**Administrator, The Pension Plan for  
Salaried Employees of Carpita  
Corporation and Subsidiary and  
Affiliated Companies, Registration  
Number 0598425 (formerly C-15303)**

**ALLOCATION**

WHEREAS on 31st day of July, 1997 the Pension Commission of Ontario (the "Commission") declared, pursuant to sections 83 and 90 of the Pension Benefits Act, R.S.O. 1990, c. P.8, (the "Act"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to The Pension Plan for Salaried Employees of Carpita Corporation and Subsidiary and Affiliated Companies, Registration Number 0598425 (formerly C-15303) (the "Pension Plan");

AND WHEREAS on the 19th day of December 1997 the Commission allocated from the Guarantee Fund to pay to the Pension Plan an amount not to exceed \$310,701.53 (the "First Allocation");

AND WHEREAS the Administrator of the Pension Plan has advised that the actual cost to purchase annuities to fund entitlements under the Pension Plan will exceed the estimate of the cost to purchase those annuities which was used for the calculations made to determine the First Allocation from the Guarantee Fund made by the Commission and that a further Allocation is required;

AND WHEREAS the Superintendent of Financial Services is now responsible under the Pension Benefits Act, as amended, for allocating funds from the Guarantee Fund.

NOW THEREFORE the Superintendent of Financial Services shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount, not to exceed \$145,058.85 to provide, together with the First Allocation and the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund, but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 28th day of May, 1999.

Dina Palozzi  
Superintendent of Financial Services



*Pension Plan for Hourly - Rated Employees of Barrymore Carpet Division of Carpita Corporation, Registration Number C-14852*

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28;

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under section 83 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28, respecting the *Pension Plan for Hourly - Rated Employees of Barrymore Carpet Division of Carpita Corporation, Registration Number C-14852*;

TO: KPMG Inc.  
(formerly Peat Marwick Thorne Inc.)  
Suite 3300, Commerce Court West  
P.O. Box 31, Stn Commerce Court  
Toronto, ON  
M5L 1B2  
Attention: Michael Creber, Senior Vice President  
**Administrator, Pension Plan for Hourly - Rated Employees of Barrymore Carpet Division of Carpita Corporation, Registration Number C-14852**

AND TO: Ernst & Young Inc.  
P.O. Box 251, 22nd Floor  
Ernst & Young Tower  
Toronto Dominion Centre  
Toronto, ON  
M5K 1J7  
**Trustee in Bankruptcy**

AND TO: Amalgamated Clothing & Textile Workers Union AFL - C10, Local 1464  
(formerly Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351)

34 Madison Avenue  
Toronto, ON  
M5R 3N6  
**Union**

AND TO: Barrymore Carpet Division of Carpita Corporation  
7075 Ordan Drive, Unit A  
Mississauga, ON  
L5T 1T1

Attention: Leslie MacTaggart  
Manager Human Resources/  
Payroll  
**Employer**

### ALLOCATION

WHEREAS on May 28th, 1999 the Superintendent of Financial Services declared, pursuant to sections 83 and 89 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (the "Act"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan for Hourly-Rated Employees of Barrymore Carpet Division of Carpita Corporation Registration Number C-14852 (the "Pension Plan");

NOW THEREFORE the Superintendent of Financial Services shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$34,831.41 to provide, together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 28th day of May, 1999.

Dina Palozzi  
Superintendent of Financial Services



*Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923 (formerly C-101854)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Declaration by the Superintendent of Financial Services under section 83 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923 (formerly C-101854);**

**TO:** Arthur Andersen Inc.  
P.O. Box 29  
Toronto-Dominion Centre  
1900-79 Wellington Street West  
Toronto, ON  
M5K 1H1  
Attention: David R. Kearney,  
**Administrator, Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923 (formerly C-101854)**

**AND TO:** PricewaterhouseCoopers Inc.  
275 Dundas Street, Suite 1500  
London, ON  
N6B 3L1  
Attention: Aldis Makouskis  
**Trustee in Bankruptcy of Epton Industries Inc.**

**AND TO:** United Steelworkers of America, Local 73  
(formerly United Rubber, Cork, Linoleum and Plastic Workers of America, Local 73)  
234 Eglinton Avenue East, 7th floor  
Toronto, ON  
M4P 1K7

Attention: Ken Dawson

**Union**

**AND TO:** Epton Industries Inc.  
521 King Street West  
Kitchener, ON  
N2G 1C5

Attention: Dennis Hall, Vice President,  
Finance  
**Employer**

### ALLOCATION

**WHEREAS** on May 28, 1999 the Superintendent of Financial Services declared, pursuant to sections 83 and 89 of the Pension Benefits Act, R.S.O. 1990, c. P.8, (the "Act"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923 (formerly C-101854) (the "Pension Plan");

**NOW THEREFORE** the Superintendent of Financial Services shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$3,144,020 to provide, together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

**DATED** at North York, Ontario, this 28th day of May, 1999.

Dina Palozzi  
Superintendent of Financial Services



## Tribunal Activities

### Appointments of Financial Services Tribunal Members

Name and O.C.	Effective Date of Appointment	Expiry Date
<b>Milczynski, Martha</b> (Acting Chair) O.C. 1808/98 (Vice-Chair)	January 13, 1999 July 8, 1998	July 7, 2001
<b>McNairn, Colin</b> (Vice-Chair) O.C. 1809/98	July 8, 1998	July 7, 2001
<b>Bush, Kathryn M.</b> (Acting Vice-Chair) O.C. 904/97	June 17, 1999 January 13, 1999 (Acting Vice-Chair) May 14, 1997	June 16, 2000  June 16, 1999
<b>Erlichman, Louis</b> O.C. 2527/98 O.C. 1592/98	December 9, 1998 June 17, 1998	December 8, 2001 December 16, 1998
<b>Forbes, William M.</b> O.C. 520/98	March 25, 1998	March 24, 2001
<b>Gavin, Heather</b> O.C. 11/99	January 13, 1999	January 12, 2002
<b>Greville, M. Elizabeth</b> O.C. 222/99 O.C. 2405/95	January 27, 1999 February 8, 1996	January 26, 2002 February 7, 1999
<b>Martin, Joseph P.</b> O.C. 1810/98	July 8, 1998	July 7, 2001
<b>Moore, C.S. (Kit)</b> O.C. 1591/98	July 1, 1998	June 30, 2001
<b>Robinson, Judy</b> O.C. 905/97	May 14, 1997	May 13, 2000
<b>Stephenson, Joyce Anne</b> O.C. 2409/98 O.C. 1930/95	November 4, 1998 October 28, 1995	November 3, 2001 October 27, 1998
<b>Wires, David E.</b> O.C. 257/97	February 27, 1997	February 26, 2000





## Hearings Before the Pension Commission of Ontario

### **Pension Plan for Unionized Employees of Asea Brown Boveri Inc. Located at London, Burlington and St. Jean, 683433, FST File X-0003**

In July 1996, the Superintendent issued a Notice of Proposal to Refuse to Approve a Wind-Up Report filed by Asea Brown Boveri Inc. ("ABB") on the grounds that the wind-up report did not provide "grow-in" benefits in accordance with s. 74 of the *Pension Benefits Act* ("PBA"). ABB requested a hearing. Plan members belong to the CAW. The Union advised the Registrar that it wished to be a party to the hearing.

In May 1997, the Superintendent requested that the matter be adjourned pending the outcome of the *GenCorp* case. In July 1997, the matter was adjourned *sine die* for a period not exceeding one year.

On November 6, 1998, the Superintendent of Pensions issued an Amended Notice of Proposal to Refuse to Approve a Wind-Up Report. A pre-hearing conference was held on January 22, 1999.

At the pre-hearing conference it was agreed that the parties would try to resolve some of the issues. A telephone conference call was held on July 12, 1999. The Superintendent was asked to contact the administrator of the Westinghouse Canada Inc. pension plan, a predecessor plan for some affected ABB employees, to determine whether the partial wind-up reports will be filed with the Superintendent pursuant to four Orders issued on May 13, 1999.

### **McDonnell Douglas Canada Ltd. Salaried Plan, Registration Number 520593, FST File #X-0006**

In November 1996, the Superintendent advised certain former members of the McDonnell Douglas Plan that he would not order the partial wind-up they had requested. In December 1996, an individual, on behalf of a group of former McDonnell Douglas Employees, requested a hearing regarding the Superintendent's refusal to order a partial wind-up of the Plan.

A pre-hearing was held in July 1997, and continued in October and November 1997. A jurisdictional hearing was held on March 27, 1998. The hearing panel decided that the Commission had jurisdiction to hear this matter

pursuant to Section 89 of the PBA. Reasons for Decision were issued on May 25, 1998. A hearing on the merits was held on November 4, 5 and 6, 1998, and continued on February 9 and 10, 1999. A decision with reasons was released on May 19, 1999. The panel found that the conditions of one or more of sections 69(1)(d) and (e) of the PBA were satisfied with respect to the Plan during the period 1990 - 1994. The matter was referred back to the Superintendent to determine (i) whether to exercise her discretion and order a partial wind-up of the Plan, and (ii) if a partial wind-up is ordered, whether to amend, either or both, of the commencement and end dates of the partial wind-up period. The Reasons for Decision are published in this issue of the Pension Bulletin at page 58.

### **CWA/ITU Pension Plan (Canada), Registration Number 554717, FST File #X-0012**

In March 1998, the Communications, Energy and Paperworkers Union of Canada ("CEP") requested a hearing pursuant to s.89 of the PBA regarding a proposed partial wind-up of the Plan. It asked the Commission: (a) to rescind the resolution of the Trustees to partially wind up the plan; (b) to order the Trustees and Administrator not to take any steps to realize the partial wind up; (c) to require the Plan to accept employer contributions on behalf of active members for work performed after December 31, 1997; and (d) to order the Trustee to fully consider dividing the Plan's assets and liabilities on an equitable basis between a CWA/ITU Plan and a Union Plan based on the number of retirees and the number of active participants.

A jurisdictional motion was heard on February 15, 1999. A hearing on the merits was held on February 22 through 26, 1999. A decision with reasons was released on June 7, 1999. The application was dismissed. The Reasons for Decision are published in this issue of the Pension Bulletin at page 69.



## Pension Hearings Before the Financial Services Tribunal

### **Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230, FST File #P-0013-1998**

On November 30, 1998, the Superintendent of Financial Services issued a Notice of Proposal to Refuse to Approve a Partial Wind-Up Report filed by Monsanto respecting a 1997 plant closure. The grounds for the refusal were: (a) the wind-up report did not deal with the treatment of surplus on partial wind-up; (b) the payment of benefit enhancements on wind-up to certain members constituted an inequitable distribution of surplus, and an indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) the wind-up report provided that the funds relating to benefits of those in the partial wind-up group were to remain in the pension plan's fund rather than being distributed by way of a purchase of annuities.

On December 31, 1998, Monsanto Canada Inc. ("Monsanto") requested a hearing before the Financial Services Tribunal. Monsanto has requested an order directing the Superintendent to approve the partial wind-up report pursuant to s.89(9) of PBA.

A pre-hearing conference was held on April 7, 1999.

On June 2, 1999, a motion was heard in which Monsanto requested orders for disclosure of various documents and answers to various interrogatories from the Superintendent. The panel made the orders requested and gave the Superintendent 30 days to provide the material. Written reasons for the orders were released on June 21, 1999, and are published in this issue of the Pension Bulletin at page 77.

The hearing is scheduled to proceed on October 4 through 8, 1999.

### **National Hockey League Players' Pension Plan, Registration Number 353623, FST File P0045-1999**

On April 8, 1999, the Tribunal received a request for hearing from the National Hockey League regarding the Superintendent's Notice dated March 3, 1999, proposing to order the National Hockey League Pension Society to appoint an Administrator and a trustee for its pension

plan that complied with the PBA within 60 days of the date of service of the Notice of Proposal.

The National Hockey League requested that no hearing dates be set. The NHL indicated that it was hopeful that compliance would be achieved through collective bargaining. The NHL and the players' association requested an extension of time to comply with the Notice of Proposal. The Superintendent granted this extension and the Tribunal agreed not to set any hearing dates for the time being.

### **Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 0321554 and the Pension Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 0292946, FST File P0051-1999**

On March 30, 1999, the Superintendent approved an application by Rockwell Automation Canada Inc. for the transfer of assets in the amount of \$28,720,000 from the pension plan for Reliance Electric Limited to the Pension Plan for Employees of Rockwell Automation, effective January 1, 1998. A member of the Reliance plan requested a hearing on May 18, 1999. Rockwell has applied to be granted standing in the hearing.

At a pre-hearing conference on July 6, 1999, the matter was adjourned sine die.

### **Ontario Institute for Studies in Education Employee Pension Plan, Registration Number 353854, FST File P0054-1999**

On June 1, 1999, the Governing Council of the University of Toronto requested a hearing regarding the Superintendent's Notice of Proposal dated April 30, 1999, to partially wind-up the plan. A pre-hearing conference has been scheduled for September 17, 1999. The OISE Professional Staff Association, the United Steelworkers of America and the Ontario Public Service Employees Union, Local 578 have filed Applications for Party Status.



### **Consumers Packaging Pension Plan II, Registration Number 998682, FST File P0055-1999**

Consumers Packaging Inc. filed a request for hearing on June 18, 1999, regarding the Superintendent's Notice of Proposal dated April 30, 1999, to order that the replacement call-in employees who fulfilled certain conditions be admitted as members into the pension plan.

The United Steelworkers of America has been granted standing in the hearing. A pre-hearing conference was held on August 19, 1999. A settlement conference will be held on October 14, 1999. Hearing dates will be scheduled in January and February 2000.

### **The Retirement Plan for Salaried Employees (Consumer Foods) of General Mills Canada, Inc., Registration Number 342042, FST File P0058-1999**

In June 1999, General Mills Canada Inc. requested a hearing regarding the Superintendent's Notice of Proposal dated May 19, 1999, refusing to approve a partial wind-up report. The reasons for the refusal were: (a) the partial wind-up report did not deal with the treatment of surplus on partial wind-up; (b) the payment of benefit enhancements on wind-up to certain members constituted an inequitable distribution of surplus, and an indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) proper notice of the partial wind-up was not provided to the affected members, and the partial wind-up report does not allow the affected members who are entitled to an immediate pension and who receive a "special pension upgrade" to commute their pension benefits.

A pre-hearing conference scheduled for October 15, 1999, was adjourned *sine die*. The parties will contact the Registrar by January 15, 2000, to schedule a telephone conference call with the Chair to determine how this matter will proceed.

### **Labourers' Pension Fund of Central and Eastern Canada, Registration Number 573188, FST File P0059-1999**

On June 14, 1999, the Labourers' Pension Fund requested a hearing pursuant to section 89 of the PBA with respect to

the Superintendent's Notice of Proposal dated May 18, 1999, proposing to order the Labourers' Pension Fund of Central and Eastern Canada to prepare and file two new actuarial valuation reports with valuation dates of December 31, 1996, and December 31, 1997, and to use certain assumptions and methods in the preparation of these reports. A pre-hearing conference scheduled for October 14, 1999, was adjourned to allow the parties to narrow and perhaps resolve the issues, subject to the term that the parties are to advise the Registrar by December 31, 1999 whether a pre-hearing conference will be required.

### **Ontario Teachers' Pension Plan, Registration Number 345785, FST File P0060-1999**

On June 16, 1999, the Ontario Teachers' Pension Plan Board filed a request for hearing regarding the Superintendent's Notice of Proposal dated May 6, 1999, to order the Ontario Teachers' Pension Plan Board to comply with section 51 and subsections 48(13) of the PBA and pay to a deceased member's former spouse certain amounts or benefits under a domestic contract. A pre-hearing conference was held on July 21, 1999 and continued on August 31, 1999. Hearing dates are scheduled for December 13 and 14, 1999.

### **Consumers Packaging Pension Plan II, Registration Number 998682, FST File P0068-1999**

Consumers Packaging Inc. filed a request for hearing on June 18, 1999, regarding the Superintendent's Notice of Proposal dated April 30, 1999, to refuse to approve a partial wind-up report.

The reasons for the refusal are that the partial wind-up report does not provide grow in to plant closure benefits for hourly union employees, and that it does not include the liabilities for certain replacement call-in employees who should be admitted into the plan. (See FST File P0055, above.) The United Steelworkers of America's Local 203G has been granted standing in the hearing. A pre-hearing conference was held on August 19, 1999. A settlement conference will be held on January 31, 2000. Hearing dates will be scheduled in March 2000.





## Pension Commission of Ontario Decisions - Applications since March 1999

*(Note: In this section, "Commission" refers to the Pension Commission of Ontario.)*

### Commission Decisions - Applications March 25 to May 20, 1999

#### **Surplus Withdrawal on Plan Wind-Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909, (as amended by O. Reg. 743/91) and s. 78(1) and 79(3) of the Act**

At the Commission meeting held March 25, 1999, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

#### **(a) Retirement Plan for Employees of Canadian Fine Color Company, Limited, Registration Number 0229492**

Payment of surplus to Canadian Fine Color Company, Limited from the Retirement Plan for Employees of Canadian Fine Color Company, Limited, Registration Number 0229492, in the amount of 50% of the surplus (\$202,650.50 as at July 31, 1998), plus 50% of net investment earnings and less 50% of expenses to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

#### **(b) C & C Yachts Manufacturing Limited Partnership Employee Pension Plan, Registration Number C-13343**

Payment of surplus to PricewaterhouseCoopers, formerly Price Waterhouse Limited, (a Receiver) from the C & C Yachts Manufacturing Limited Partnership Employee Pension Plan, Registration

Number C-13343, in the amount of \$219,527.47 as at March 31, 1997 adjusted for all investment earnings to the date of payment and less all fees and expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

#### **(c) Standard Trustco Limited Employees' Retirement Plan, Registration Number 556340**

Payment of surplus to Standard Trust Company in liquidation from the Standard Trustco Limited Employees' Retirement Plan, Registration Number 556340, in the amount of \$421,416 as at June 28, 1991, plus a pro-rata share of all investment gains (net of all investment losses) thereon to the date of payment less a pro rata share of all reasonable costs incurred in connection with the administration and wind-up of the Plan and the implementation of a surplus sharing agreement.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

#### **(d) The Retirement Pension Plan for Employees of the Canadian Car and Canadian Steel Foundries Divisions of Hawker Siddeley Canada Inc., Registration Number 344184**

Payment of surplus to Hawker Siddeley Canada Inc. and CGTX Inc. from The Retirement Pension Plan for Employees of the Canadian Car and Canadian





Steel Foundries Divisions of Hawker Siddeley Canada Inc., Registration Number 344184, in the amount of 50% of \$10,475,750 as at June 17, 1996 plus 50% of the gains (net of losses) thereon from that date to the date of payment, minus 50% of all costs, fees, disbursements and other expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

At the Commission meeting held April 29, 1999, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Retirement Plan for the Salaried Employees of OMYA (Canada) Inc., Registration Number 345462**

Payment of surplus to OMYA (Canada) Inc. from the Retirement Income Plan for the Salaried Employees of OMYA (Canada) Inc., Registration Number 345462, in the amount of 50% of \$843,800 (the estimated amount of surplus in the plan as at February 28, 1997), plus 50% of investment earnings thereon to the date of payment, subject to adjustment for administrative costs and fees as detailed on page 2 of the Application.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

At the Commission meeting held May 20, 1999, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Pension Plan for Salaried Employees of Robertson Building Systems Ltd., Registration Number 344556**

Payment of surplus to Robertson Building Systems Ltd. from the Pension Plan for Salaried Employees of Robertson Building Systems Ltd., Registration Number 344556, in the amount of 52% of the surplus (full amount estimated to be \$9,863,600 as at June 30, 1998) plus 52% of investment earnings thereon to the date of payment, less 52% of all reasonable costs incurred but not yet deducted in connection with the administration and wind-up of the Pension Plan and the implementation of the Surplus Settlement Agreement (as defined in the Application), payable immediately following the payment of the surplus entitlements of the Plan Beneficiaries (as defined in the Application); provided that, in accordance with the terms of the Surplus Settlement Agreement, as soon as practical after the end of each calendar month following commencement of payments to the Plan Beneficiaries of their individual surplus entitlements, an amount shall be paid out of the Company's share of the surplus to the Company in cash, equal to the total of the individual portions of the surplus paid to Plan Beneficiaries in the calendar month. If the distribution of the Plan Beneficiaries' share of the surplus has not been commenced by October 15, 1999, the Plan Beneficiaries' share of the surplus may be segregated from the Company's share of the surplus and held in a separate fund, in accordance with paragraph 12(a) of the Surplus Settlement Agreement.



## Commission Decisions with Reasons

(Note: In this section, “Commission” refers to the Pension Commission of Ontario.)

**INDEX NO.:** XDEC-44

**PLAN:** McDonnell Douglas Canada Ltd. Salaried Plan, Registration No. 520593

**DATE OF DECISION:** May 19, 1999

**PUBLISHED:** FSCO Pension Bulletin 8/2 and FSCO website

**IN THE MATTER OF** the Pension Benefit Act,  
R.S.O. 1990 c.P.8 (the “Act”)

**AND IN THE MATTER OF** the refusal of the  
Superintendent of Pensions to make an Order requiring  
the partial wind-up of the McDonnell Douglas Canada  
Ltd. Salaried Plan, Registration No. 520593

**AND IN THE MATTER OF** a Hearing in  
Accordance with subsection 89(8) of the Act  
**BETWEEN**

GARY MAYNARD

Applicant

- and -

SUPERINTENDENT OF PENSIONS

Respondent

- and -

McDONNELL DOUGLAS CANADA LTD.

Respondent

**BEFORE:** Kathryn M. Bush, Vice Chair  
C.S. (Kit) Moore, Chair  
Donald Collins, Member

**APPEARANCES:** For the Applicant:  
Mr. Murray Gold  
Mr. Roberto Tomassini

For the Superintendent of  
Pensions:  
Ms. Deborah McPhail

For the Respondent:

Mr. Mark Freiman

Mr. Greg Winfield

**Hearing Dates:** November 4, 5 & 6, 1998 and  
February 9 & 10, 1999

**Decision Released:** May 19, 1999

### REASONS FOR DECISION

#### Nature Of The Application

The Applicant raised with the Pension Commission of Ontario (the “Commission”) whether McDonnell Douglas Canada Limited (“MDCan”) ought to partially wind-up the McDonnell Douglas Canada Ltd. Salaried Plan, Registration No. 520593 (the “Plan”) as a result of activities which occurred at MDCan between 1990 and 1994. On November 8, 1996, the Superintendent of Pensions for the Province of Ontario (the “Superintendent”) responded to the Applicant stating that the Superintendent was unable to conclude that there were grounds to order a wind-up of the Plan:

“... ”

PCO staff have recently completed a review of the circumstances surrounding the termination of employees at McDonnell Douglas Canada Ltd. during the period of 1990 to 1994. I have fully and carefully considered the facts and issues from that review. After such consideration, I am unable to



conclude that there are grounds to order a partial wind-up of the Plan under subsection 69(1) of the Pension Benefits Act during that time period and I do not intend to make such an order”

By letter dated December 3, 1996, the Applicant wrote to the Commission requesting a hearing with respect to the Superintendent's refusal to issue the requested notice of proposal for a partial wind-up of the Plan.

Pursuant to the Commission's Rules of Practice for Proceedings under Section 89 of the Pension Benefits Act (“PBA”), a formal request for a hearing before the Commission was filed on behalf of the Applicant on January 22, 1997. In it, the Applicant requested that the Commission direct the Superintendent to issue an order requiring the Plan to be partially wound-up in respect of those members of the Plan involuntarily terminated by MDCan during the period from January 1, 1990 to December 31, 1994.

At Pre-hearing conferences held with respect to this hearing the Commission ruled that the issues on the merits should be framed as follows:

- Did a significant number of members of the Plan cease to be employed by MDCan as a result of a reorganization of MDCan's business at any time between January 1, 1990 and December 31, 1994?
- Did a significant number of members of the Plan cease to be employed by MDCan as a result of a discontinuance of all or part of the business of MDCan at any time between January 1, 1990 and December 31, 1994?
- Was a significant portion of the business carried on by MDCan at a specific location discontinued between January 1, 1990 and December 31, 1994?
- If the answer to (a), (b), or (c) is yes, should the Commission, under subsection 89(9) of the Act, direct the Superintendent to order a partial wind-up of the Plan?

- If the answer to (d) is yes, what are the appropriate commencement and end dates for the partial wind-up order concerning the Plan?
- Is the Applicant entitled to have his legal costs incurred in connection with the Hearing paid from the Plan fund or by the Respondent, MDCan?

### Facts

The following facts are predominantly taken from the Agreed Statement of Facts filed in the Application.

MDCan is a corporation which carries on business of manufacturing various elements of commercial aircraft, primarily wings. MDCan is a wholly-owned subsidiary of the McDonnell Douglas Corporation (“MD US”) based in St. Louis, Missouri. Effective the autumn of 1997, MD US became a wholly-owned subsidiary of the Boeing Corporation based in Seattle, Washington.

MD US carries on business relating to the manufacture of military and commercial aircraft and is the primary customer for MDCan's products. MDCan also produces product for “after-market sales” and parts production. MDCan operates primarily out of a single location in Malton, Ontario.

At all relevant times, MDCan has been the sponsor and administrator of the Plan, a registered pension plan provided for salaried employees of MDCan and its affiliates.

By letter dated August 24, 1992 to Larry Martello of the Commission, the Applicant requested an investigation to be undertaken to determine whether a partial wind-up for the Plan was warranted.

Commission staff conducted an investigation to determine if a partial wind-up of the Plan should be required in this case. The investigation was concluded and culminated in a report prepared by Mark Eagles for the Superintendent dated July 7, 1995 (the “Eagles Report”). Mr. Eagles concluded that:



“Between January 1, 1990 and December 31, 1993, approximately 391 salaried plan members were terminated by the Company and a further 31 were involuntarily retired. During 1994, a further three Plan members were laid off and there were two more involuntary retirements. Of the 427 persons whose employment was involuntarily terminated over that five-year period, 6 have been rehired. Effective January 1, 1990 the plan membership was reported as being 839; thus roughly one half of the plan membership has been involuntarily terminated during the past five years.”

### Relevant Legislation

The issues to be decided in this matter will be decided on the basis of sections 69(1)(d), 69(1)(e) and 89(9) of the Act. For ease of reference those sections are set out below:

“69.—(1) The Superintendent by order may require the wind-up of a pension plan in whole or in part if,

...

(d) a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;

(e) all or a significant portion of the business carried on by the employer at a specific location is discontinued.

...

### Power of Commission

89(9) At or after the hearing, the Commission by order may direct the Superintendent to carry out or to refrain from carrying out the proposal and to take such action as the Commission considers the Superintendent ought to take in accordance with this Act and the regulations, and for such purposes,

the Commission may substitute its opinion for that of the Superintendent.”

### Jurisprudence

There are a number of decisions of both the Commission and the Ontario courts, which are relevant to the issues to be decided in this matter and relevant portions of those decisions, are briefly set out below.

The Ontario Court of Appeal in the Firestone Canada Inc. v. Pension Commission of Ontario, Murray, DiFrancesco and United Rubber, Cork, Linoleum and Plastics Workers of America, Local, 113, (1990) 1 O.R.(3d) 122 at p.127 made the following statement relating to the Act and pension plan wind-ups:

“...The Act is clearly intended to benefit employees. It prescribes minimum standards for all pension plans in the Province of Ontario. ...

In particular, the Act evinces a special solicitude for employees affected by plant closures.”

The recognition in the Firestone case of the “special solicitude” for employees in a plan wind-up leads to the heart of the questions in issue in this hearing, i.e., was there a plan wind-up, in this case a partial plan wind-up.

In the Commission decision relating to the Stelco Retirement Plan for Salaried Employees (Commission, July 7, 1993) the Commission made the following statement:

“In enacting Section 69(1)(d) the Legislature was concerned about protecting older employees with appreciable amounts of service who involuntarily lose their employment as a result of a major change in the way in which their employer carries on its business. It is from that perspective that the term ‘reorganization’ must be interpreted.” (Emphasis Added)

The Divisional Court (1994) 4 C.C.P.B. 108, 115 D.L.R.(4th) 437, 75 O.A.C. 61, approved the Commission’s approach to the meaning of “reorganization”:





"The commission gave it a broader meaning to include changes in the way in which the different parts of the company related to one another and the size of the company. That meaning has considerable support from the dictionary. One of the meanings of 'organize' in Webster's New World Dictionary (Second College Edition), is 'to make into a whole with unified and coherent relationships'." (Emphasis Added)

The Court of Appeal (1995) 9 C.C.P.B. 126, upheld entirely the decision of the Divisional Court in Stelco.

The Divisional Court in Stelco also approved of the Commission's use of the statements of Stelco as evidence of a reorganization:

"In this case, the commission relied on the company's own statement in its annual report that it was reorganizing plants along business or process lines. In our view, the commission was entitled to rely on that statement as some evidence that the changes that had taken place in the corporation, which resulted in the reduction in the number of employees, were part of a process of reorganization. As we put it in exchanges with Mr. Freiman late in his argument, these steps all constituted the reaction of the company to a number of difficult problems that had arisen from different sources."

The Commission applied the Stelco definition, and evidence, of a reorganization in its decision relating to the Imperial Oil Ltd. v. Ontario (Superintendent of Pensions) (1996), 15 C.C.P.B.31(PCO).

The Imperial Oil decision of the Commission is interesting to this hearing as it addresses the evidence which establishes a reorganization and the issue of whether cost reduction can result in a reorganization:

"The speeches are replete with restructuring and reorganization phrases. They explain that structural change must take place, which will lead, to work force reductions. They indicated that the changes would involve a centralisation of control of the operating companies; consolidation of the business

support functions of each division within the company's headquarters; disengagement from unprofitable lines of business; and rationalisation of divisional and headquarters's operations.

...

...As we noted above, operating companies were consolidated into divisions, support functions were centralized, properties were sold, various operations were divested and closed. The result was that a great many employees lost their jobs. The result also was that costs were cut. But, we cannot accept that if cost reduction is the reason to make major changes in the size, structure and functioning of a company, that it precludes a finding that a reorganization took place. We find that Imperial Oil implemented an extensive, large scale reorganization of its business between February 4, 1992 and June 30, 1995. We accept that the purpose of the reorganization of the business was to reduce costs and increase profitability but that does not change the fact that a reorganization of the business took place.

...

*Hawker Siddeley Canada Inc. v. Nova Scotia (Superintendent of Pensions)* (1993), 108 D.L.R. (4th) (N.S. S.C.); *aff'd* (1994), 113 D.L.R. (4th) 424 (N.S. C.A.) is additional authority for this view of reorganization. It stated that reorganization of a business does not refer solely to a change in the organization of the company but also the way in which a company does business.

The 'business of the employer' includes the structure under which the employer operates and, as well, the employees involved. (*Hawker Siddeley* at p. 119 (N.S. S.C.))

Did a reorganization of the business of Imperial Oil take place? In our view the answer to that is an unequivocal "yes". The *structural changes, divestment activity, consolidation of functions and elimination of non-core business activities* all amounted to a change in the structure in which the business of Imperial



Oil operated. We recognize that other words – such as restructuring – could be used to describe what took place but the reality is that the way in Imperial Oil was *organized to do business was materially changed* and that amounts to a reorganization of its business, within the meaning of clause 69(1)(d).

...

...The purpose of clause 69(1)(d) is to protect plan members in situations where a significant number of terminations occur as a result of a reorganization of the business. The reason that prompts the reorganization may be cost cutting, bench marking or cyclical employment patterns due to price fluctuations but whatever the underlying cause, it is the fact of the reorganization that is of legal significance.”

The Divisional Court, 16 C.C.P.B. 93, affirmed the Commission’s decision in Imperial Oil and went on to provide guidance with respect to how the causal connection to a reorganization ought to be established:

“...

In regard to the last point, the way in which the Commission chose to approach it was sensible, practical and fair. It does not take some great leap of faith or presumption to arrive at the conclusion that significant jobs were lost “as a result of” the reorganization found to have taken place, without the need to examine into the minutiae of evidentiary materials that might be involved, both subjectively and objectively, in looking into each of many hundreds of terminations. ...”

### Issues 1, 2, And 3

As noted in the facts as set out above, a significant number of members (427) were terminated or involuntarily retired by MDCan during the period January 1, 1990 and December 31, 1994. These terminations and involuntary retirements also represented a significant percentage, approximately 50%, of total Plan membership as at January 1, 1990.

The issues to be decided are whether those cessations of employment resulted from:

- a reorganization of MDCan;
- a discontinuance of all or part of the MDCan business; or
- the discontinuance of a significant portion of the MDCan business at a specific location.

The sheer number of MDCan’s employment terminations during the relevant period, more than 50% of the plan membership, suggests that at least a portion of the MDCan business was discontinued. (In the late 1980’s MDCan had approximately 5,000 total employees and the number of employees had dropped below 1,500 total employees by the end of 1994.) MDCan argued that other than minor product lines, the same product was produced at the beginning of the time period as at the end and that the only change was that the demand for their product had decreased and therefore their employment needs had also decreased. This argument does not however, address the question of whether the “shrinking” business constituted a discontinuance of part of the business.

As outlined above, the courts have evidenced a desire to interpret the Act broadly in order to protect the interest of plan members, see Firestone, Stelco and Imperial Oil, *supra*.

In addition, the materials filed with the Commission include many references to “reorganizational” activities relating to two initiatives during the relevant time period. The first, completed during 1990, involved a change from a functional to a product - oriented business, and a flattening of managerial layers from 8 to 4 levels. This initiative was sometimes referred to as the “Palfrey” initiative. The second, approximately two years later included a change back to a functional or a vertical structure from the product-oriented structure. During these periods MDCan discontinued and transferred out certain non-core products and services.



While we heard a great deal of evidence regarding the changes occurring within MDCan during the 1990-1994 period we will outline only the most illustrative excerpts:

The Palfrey initiative was described in the "President's Meeting-Report on MDCan" April 27, 1987:

...

MDCan's goal of becoming a low-cost manufacturer of quality aircraft components is being accomplished through implementation of an extremely extensive and comprehensive Five-Year Plan, which is made up of specific programs and major systems and process changes to the way we work. As part of a master plan, each component of these changes is inseparable from the other components, and the sequence of changes is critical to success. At MDCan, it was felt that attempts to change the way people relate to one another and their daily work, while leaving the management structure and systems intact, were doomed to failure. Since attitudes towards work, as well as interpersonal and interdepartmental relationships, are largely determined by a series of motivational factors inherent in the management system and infrastructure itself, changes to the infrastructure are critical to the success of attempts at continuous improvement. Changing our management and manufacturing methods to facilitate a change to the way all of our people are required to relate to each other and their work required planned change to our management structure, decentralisation and integration of functions into a product orientation, involvement of all of our people, changes in our manufacturing methods and inventory systems, as well as integration of job skills and vertical loading of individual employees. It was felt that without major changes to the infrastructure surrounding our work by management, early attempts at improvements through participation and involvement processes would not sustain

themselves. The Five- Year Plan will result in the emergence of a productive aircraft plant substantially changed in geographic layout, methods of manufacture, management methods and structure, and individual task responsibilities. [Emphasis added]

HR Horizontal Team Meeting Records dated February 1, 1990:

"...

Topic Five: Surplus People  
Presented by: Pat McKenna

Main Points

- There will likely be a surplus of CBU and salaried employees as a result of the reorganization efforts and production improvements
- Currently a mechanism exists to deal with surplus people in the CBU's (i.e.: Skills Adjustment Committee, New Technology Committee)
- There is a need to develop a plan, on a global basis, to waylay growing fears about declarations of surplus; it is important to develop meaningful alternatives for affected people.

Decision

Conclusion:

- Brian Sawyers to head up a committee consisting of Maj Cober, Harry Buchmueller and a representative from Paul Holub's area.
- Labour Relations should develop a presentation on the CBU committees already in existence and present such to the VBU's as well as mentioning that a plan is being developed for salaried personnel..." (Emphasis Added)



President's Newsletter dated February 6, 1990:

"...

As your incoming President of MDCan, I've spent the past four weeks getting familiar with what goes on at MDCan, finding a place to reside in Toronto, and looking for opportunities for improvement. I'd like to give you a report of my perceptions so far...

Near-Term Efforts - My personal near-term effort will be focused on three activities:

- Becoming more familiar with MDCan, its people and opportunities for improvement.
- Actively participating in and facilitating the conclusion of the reorganization started in April of 1989 - I feel this reorganization will identify the major players in our effort to create a participative management and a work accomplishment process (our target for completing this activity is within 60 days).
- Actively working with MDCan personnel in future planning for MDCan's strategic direction..." (Emphasis Added)

Administrative Bulletin from the President of MDCan to all Employees dated March 1, 1990:

SUBJECT: ALL EMPLOYEES

TO: REORGANIZATION

One of the key issues that I have run across at MDCan is the delayed reorganization or restructuring.

We have done several things to re-start the restructuring effort that began almost a year ago. ...

The Management Council's first and primary job is to make recommendations about the restructuring. While the Management Council is working on the restructuring, we wanted to publicize:

- the identity of the Council members,
- the structure they are working with, and
- the positions of the Council members.

This information is illustrated on the reverse side, and the people selected will begin the transition into their new roles effective immediately.

The Management Council is currently meeting to define the next tier of the structure, both in terms of function and people. When the Management Council reaches additional conclusions or recommendations, we will let you know." (Emphasis Added)

Letter from the President's Office dated March 28, 1990:

"The news on organization definition (reorganization ?!) is that progress is being made. Our 4th level selections were announced in A.B. No. 90.006 dated 1 March, 1990. The next levels are being chosen at the present time..." (Emphasis Added)

Memorandum regarding "Production Horizontal Objectives and Policy" dated April 20, 1990:

#### TEAM OBJECTIVES

- Identify and define the current Touch Labour and Support matrices for the Production box. See attachment.
- Following the Reorganization Policy establish the "recommended" Touch Labour and Support Matrices necessary to achieve Production reorganization.
- Discuss and resolve any proposed changes with the appropriate Horizontal and Vertical Teams.
- Develop a Span of Support structure to suit the finalized new reporting matrix.
- Determine the process to be used to select personnel for the new structure.

#### REORGANIZATION POLICY

When a jurisdictional or decentralization issue cannot be readily resolved, and it can be demonstrated that Process or Product integrity are not or will not be compromised by maintaining the Status Quo, then, for the purposes of completing the next level of reorganization;





- Reporting structure for the function or functions in question will remain as is i.e. within its current Vertical Business Unit and Horizontal Box.
- The Issues in question will be recorded as “open issues” to be resolved by the Team following completion of the next level of reorganization.
- These open issues must be addressed by the members of the Production Horizontal Team, and resolution must be reached at this level. Consultation and discussion with other Verticals and Horizontals may be required to reach these resolutions.
- The open issues will be prioritized by consensus and a “Plan Of Attack” will be developed for each item...” (Emphasis Added)

Letter from the President’s Office dated May 30, 1990:

“...

**REORGANIZATION TIMETABLE** - Level 2 organizational assignments have been recently announced. As stated in that announcement, we are continuing to select Level 1 candidates and to complete the transition to the new organization. It should be noted that the objective of our organizational changes is not to have a different organizational chart but to improve the performance of the enterprise. It is our view that how our organization chart looks is not nearly as important as how our people accomplish work and achieve results. As in all management changes, performance achievement is accomplished by people, not by charts or strategy. Our view of MDCan after completion of this phase of the reorganization is that it should continue to be an exciting place to work with ample opportunity for individual and group achievement. We do not feel that the organization will be rigidly set for a long period of time but will be a dynamic, every-changing structure. These dynamics should provide ample opportunity for individual achievement and recognition...”(Emphasis Added)

Administrative Bulletin from the President of MDCan to “All Supervision Mailing List A-H” dated June 27, 1990:

“MDCan has now selected most of the company’s level one leaders who will begin their transition into the more than 238 positions outlined in the attached list. Organizations and levels not shown remain unchanged...”

As MDCan begins to function under the new structure, changes may take place over the transitionary period of the next few months. New positions could be added and those outlined today may be restructured or moved to other vertical units. To be considered for future opportunities, employees should speak with the relevant leaders.” (Emphasis Added)

Letter from the President’s Office dated July 17, 1990:

“...

Much has been written about 17,000 employees being released by MDCan worldwide. At MDCan, we are planning to reduce our work force in certain areas, primarily in indirect support functions which are no longer necessary to produce the product for today’s market, and we intend to hold down indirect hiring while applying direct people to staff the needs of the MD-11 increased production rate...” (Emphasis Added)

Sample termination letter dated July 20, 1990.

HAND DELIVERED

PRIVATE & CONFIDENTIAL

WITHOUT PREJUDICE

IMANTS ANKURS, 55538/2X61

“Dear Sir:

As you are aware, McDonnell Douglas’ economic performance has been below all our expectations for some time. Because of this, we are required to undertake severe cost cutting measures as well as restructure our operations...” (Emphasis Added)



Memorandum dated October 15, 1990 from Gene Racicot, HR CORE describing the decentralization of Human Resources services:

"Effective immediately, Human Resources services previously provided on a centralized basis with regard to Employee Benefits; Personnel System (Employee Records); Requests for 807's (Employee Biography) and approvals for special pay adjustments concerning Bereavement, Statutory Holidays and Jury Duty, will be directly handled by the respective Human Resource Administrative Assistant for each Vertical Business Unit as shown in the following chart: ..." (Emphasis Added)

Memorandum from Gene Siddall, MD Can's President, dated December 17, 1990:

"1. GOAL: EVALUATE THE MANAGEMENT PERSONNEL AND COMPLETETHE REORGANIZATION STARTED IN 1989

STATUS: The initial evaluation and organizational changes were completed as a first priority of my new assignment. This action removed the atmosphere of uncertainty of responsibilities and has permitted MDCan to focus on product commitments. Based upon follow on performance evaluations and business needs, further organizational changes have been implemented to strengthen areas critical to our continued success. This process will continue in order to maximise our ability to deliver quality products, when needed, at a competitive cost. This progress met our expectations in the selection of the right people and exceeded our expectations in management buy-in and timeliness of implementation..."(Emphasis Added)

Mission Statement, which appears to have been written in 1991:

"The philosophical basis of the MDCan organizational change is to intensify the focus on product and place as

much responsibility, authority and accountability in the product programs as possible and minimize separate MDCan-wide support functions. As time moves on, more support functions should move into the product programs as it becomes feasible and economical to do so..."(Emphasis Added)

Letter from the President's Office dated January 27, 1992:

"...

The market forces, both demand for our products and selling prices we can get from our customers, continue to put pressure on us to improve operating performance in the three critical areas: cost, quality, and schedule. Because our business will be smaller in 1992 than we forecasted one year ago, we must also significantly realign our management structure, which will cause layoffs in this group. While this process is often called many things, the simple fact is that we find ourselves with too many people for the work we have to do. We will be working to change that situation..."(Emphasis Added)

Administrative Bulletin from the President to all employees dated June 5, 1992:

"SUBJECT: REORGANIZATION

TO: All Employees

Over the last number of months, MDCan has been experiencing a number of economic setbacks in its business. We are all painfully aware of the staff reductions that are being made to try and offset the reduced production levels facing us now and in the future.

As we went through the early stages of the reduction process, it became apparent that the matrix organization that was in place contained numerous examples of parallel effort, that is, people in different verticals doing similar work. In our environment, that is unacceptable.



Memorandum from Canadian President dated June 5, 1992:

“... ”

MDCan has been planning a reorganization for some period of weeks. Attachment (1) shows the existing organization. Attachment (2) shows the new organization effective 6/5/92...” (Emphasis Added)

Letter from the President dated December 2, 1993

“In the 24 months from November 1991 until now, we have gone through one of the most difficult periods in MDCan’s history. We have seen a reduction from 4800 employees to just under 1500. Throughout the downsizing, many people have been required to move to jobs that they have never done before or at best not done for several years...” (Emphasis Added)

Accordingly, the number of Plan members who ceased to be employed by MDCan during the 1990-1994 period together with the restructuring initiatives described in the material cited above lead us to the conclusion that the conditions which would support the Superintendent ordering a partial wind-up of the Plan under section 69(1)(d) and/or 69(1)(e) of the Act have been satisfied.

#### ISSUE 4

No evidence was raised by any party with respect to how, if a finding was made that the conditions of 69(1)(d) and/or 69(1)(e) of the Act were satisfied the discretion under Section 69 ought to be exercised. Accordingly, we refer this matter back to the Superintendent for consideration.

#### ISSUE 5

No evidence was raised regarding commencement and end dates for the partial wind-up order regarding the Plan and accordingly we will also refer this matter to the Superintendent for consideration.

#### ISSUE 6

Neither the Act nor the Commission’s Rules of Practice for Proceedings under Section 89 of the Act contain an express right permitting the Commission to award legal costs. In its decision in Re TIE/communications Canada Inc. Pension Plan (1994), 7 C.C.P.B. 120 (PCO) the Commission concluded that in accordance with general administrative law principles the power to award costs must be expressly conferred by legislation.

The Act has now been amended with respect to hearings before the Financial Services Tribunal to award costs. This change to the Act would appear to be in response to the conclusion in the TIE decision that the authority to award costs was lacking.

The Applicant has sought the costs in reliance upon the Nova Scotia Supreme Court decision in Central Guaranty Trust Co. (Liquidator of) v. Spectrum Pension Plan (S) (Administrator of), [1993] N.S.J. 14 (N.S.S.C.). In that case the Court found that the Superintendent under the Nova Scotia Pension Benefits Act had the power to award legal fees to be paid from surplus as an incidental power included in subsection 84(b) which allowed the Superintendent to “attach such conditions and limitations” to the consent as the Superintendent considered “necessary in the circumstances”.

The Spectrum decision precedes the changes to the Act to permit the Financial Services Commission to award costs. The language in the Nova Scotia Act was also different as it permitted “necessary” conditions in contrast to the Act permitting “proper” conditions. We have concluded that in the circumstances of the Act the reasoning in TIE is persuasive and we do not have the ability to award costs in this matter.



## ORDER

The conditions of one or more of sections 69(1)(d) and (e) of the Act have been satisfied with respect to the Plan during the period 1990 - 1994 and the matter is referred back to the Superintendent to determine (i) whether to exercise her discretion and order a partial wind-up of the Plan, and (ii) if a partial wind-up is ordered, whether to amend, either or both, of the commencement and end dates of the partial wind-up period.

Dated the 19th day of May, 1999 at the City of Toronto, Province of Ontario.

Kathryn M. Bush, Vice Chair

C.S. (Kit) Moore, Chair

Donald Collins, Member.





**INDEX NO.:** XDEC-45 (FST File No. X0012)

**PLAN:** CWA/ITU Pension Plan, Registration Number 554717

**DATE OF DECISION:** June 7, 1999

**PUBLISHED:** FSCO Pension Bulletin 8/2 and FSCO website

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c.P.8 (the “Act”);

**AND IN THE MATTER OF** the decision of the  
Superintendent of Pensions for Ontario dated February  
13, 1998, with respect to the partial wind-up of the  
CWA/ITU Pension Plan, Registration Number 554717  
(the “Plan”);

**AND IN THE MATTER OF** a hearing in  
Accordance with section 89(8) of the Act

**BETWEEN:**

COMMUNICATIONS, ENERGY AND  
PAPERWORKERS UNION  
OF CANADA (“CEP”)  
(Applicant)

- and -

SUPERINTENDENT OF PENSIONS  
(Respondent)

- and -

CWA/ITU PENSION PLAN (CANADA)  
BOARD OF TRUSTEES  
(Respondent)

**BEFORE:** Mr. David E. Wires, Chair  
Mr. Louis Erlichman, Member  
Mr. William M. Forbes, Member

**APPEARANCES:** For CEP:  
Mr. Paul J.J. Cavalluzzo  
Mr. Bernard A. Hanson  
For Superintendent of  
Pensions:

Ms. Deborah McPhail  
For CWA/ITU Pension Plan  
(Canada) Board of Trustees:  
Mr. David Stout

**HEARING DATES:** February 22, 1999 to  
February 26, 1999

**DECISION RELEASED:** June 7, 1999

## **REASONS FOR DECISION**

### **BACKGROUND**

#### **The Plan and Its Administration**

The CWA/ITU Pension Plan (Canada) (the “Plan”) is a multi-employer pension plan which was established on September 6, 1967. The Plan provides retirement benefits to members employed by employers who agree to pay contributions to the Plan pursuant to collective agreements with local unions affiliated with the International Typographical Union, now known as the Printing, Publishing and Media Workers Sector (the “Sector”) of the Communications Workers of America, AFL-CIO, CLC (the “CWA”) and pursuant to collective agreements with local unions affiliated with the Communication, Energy & Paperworkers Union of Canada, (the “CEP”).

The Plan has been registered in the Province of Ontario since September 25, 1973.

Under Article VIII section 8.01 of the Plan, employers contribute to the Plan in accordance with collective agreements negotiated by local unions.



Article V, section 5.01 of the Plan permits Plan members to accrue a monthly pension at normal retirement age equal to 3.05% of contributions. As of December 31, 1997, the Plan was paying monthly pension benefits to approximately 1,772 retirees and survivors of retirees. As of that date, approximately 113 employers were contributing to the Plan on behalf of approximately 1,790 employees.

### The Affiliation of Locals to the CEP

In or around April, 1994, several CWA Locals voted to disaffiliate from the CWA and to affiliate with the CEP. Following the vote, the CEP represented and at all material times thereafter, continued to represent a majority of the active and retired members of the Plan. The status and rights of the members of the Plan, whether active, inactive or retired, in respect of contributions and benefits were not affected by this development. The Plan continued to pay pensions to retirees in accordance with the Plan's provisions; the Collective Agreements that provided for contributions to the Plan remained in effect; the Trustees continued to accept such contributions and the Plan's benefit formula did not distinguish between members represented by the CEP Locals and members represented by the CWA.

In or around March 1996, the Chairman of the Board of the Trustees invited Fred Pomeroy, President of the CEP, to accept a seat on the Board of Trustees. The appointment of Mr. Pomeroy to the Board of Trustees was unanimously approved by the Trustees at the next meeting of the Trustees, in Toronto, in April of 1996. Since that time, the Board of Trustees has consisted of five members, three Trustees affiliated with the CWA, one of whom is the President of the Sector, one Trustee associated with the contributing Employers and Mr. Pomeroy, President of the CEP.

### Issues in the Administration of the Plan

Since approximately 1975, the Plan has, upon the advice of its actuaries (The Segal Company) used the

Entry Age Normal method of valuation of the Plan's liabilities. (These methods are described in more detail on pages 15 and 16.)

At the meeting of the Trustees, in April of 1996, Mr. Pomeroy requested and was given an opportunity to have the firm of MLH + A, actuaries and consultants, make a presentation to the Trustees advocating the adoption of the Unit Credit method of valuing the Plan rather than the Entry Age Normal method.

At the August 14, 1996 meeting of the Plan's Board of Trustees, the Plan's actuaries, in accord with the direction of the Trustees arising from the meeting of the Trustees in April of 1996, provided a report to the Trustees comparing the actuarial status of the Plan as of January 1, 1996, under the Entry Age Normal cost method and the Unit Credit method.

After the actuary made the report and following a presentation by Trustee Pomeroy in respect of the Unit Credit method of valuation, Mr. Pomeroy moved that the Trustees adopt the Unit Credit method to value the Plan's assets. The motion failed for lack of a second. Mr. Pomeroy thereafter made a motion that the Plan's assets and liabilities of the CEP and CWA portions of the Plan be equitably divided, with any dispute with respect to the division to be settled by alternative dispute resolution procedures. Upon motion duly made and seconded and adopted, Trustee Pomeroy dissenting, the Trustees voted to table Mr. Pomeroy's motion and to direct the Plan's actuary and legal counsel to study and report to the Trustees at the meeting scheduled for the Spring of 1997.

On or about April 25, 1997, the Trustees were provided with a report prepared by the Plan's legal counsel and actuaries. It proposed a partial wind-up of the Plan on the basis of wind-up liabilities. The report proposed to effect the partial wind-up of the Plan by the adoption of a resolution to discontinue the acceptance of contributions from employers bound by collective agreements with the CEP.



At the May 7, 1997 meeting of the Board of Trustees, the report was presented and Mr. Boarman, the Chairman of the Board of Trustees, solicited questions and input. Mr. Pomeroy moved to “file the report” (i.e. the proposal in the report would not proceed further), stating that it did not address the matter of the equitable division of the Plan as he had proposed at the August, 1997 meeting of the Trustees. The motion to file the report failed for lack of a second. The Trustees, Trustee Pomeroy dissenting, directed the Plan’s legal counsel and actuary to prepare an updated report and to distribute it before the next meeting of the Trustees scheduled for October 8, 1997.

The updated report was distributed to the Trustees before the October 8, 1997 meeting and was reviewed at the meeting by Plan’s legal counsel and actuary. The Trustees then adopted a resolution to effect a partial wind-up of the Plan effective December 31, 1997, Trustee Pomeroy dissenting, by determining an intent to discontinue receiving employer contributions from CEP affiliated locals.

On or about November 4, 1997, written notice of the proposal to partially wind-up the Plan in accordance with section 68(2) of the Act was issued by the Plan’s administrator and directed to all required parties in accord with the Act.

By letter dated November 21, 1997, to the Superintendent of Pensions, the CEP requested that the Superintendent issue certain Orders as follows:

1. An Order to the Trustees and Administrator of the Plan to immediately rescind its resolution adopted October 8, 1997, to realize a partial wind-up of the Plan based upon the termination as of that date of active participation in the Plan by CEP Actives and the refusal to accept contributions on behalf of CEP Actives with respect to work performed after December 31, 1997.
2. An Order requiring the Trustees and Administrator of the Plan to cease and desist from taking any steps to realize a partial wind-up of the Plan pursuant to

the resolution adopted October 8, 1997.

3. An Order requiring the Plan to continue to accept contributions on behalf of CEP Actives with respect to work performed after December 31, 1997.
4. An Order requiring the Trustees of the Plan to fully consider a division of the assets and liabilities of the Plan between a CWA Plan and CEP Plan on an equitable basis based on the number of retirees and active participants.
5. An Interim Order prohibiting the Trustees and Administrator of the Plan from taking any further steps to realize a partial wind-up of the Plan pursuant to the resolution adopted October 8, 1997.

On December 19, 1997 Mr. Pomeroy in his capacity as Trustee of the Plan and on behalf of all current and former members of locals of the CEP filed a notice of motion in the Ontario Court (General Division) seeking an interim injunction preserving the status quo and prohibiting the partial wind-up of the Plan until final disposition by that Court. By written decision of the Ontario Court (General Division) this motion was denied with costs. Ultimately, upon the Plan’s agreement not to object to the Pension Commission’s jurisdiction to hear this matter, the CEP abandoned its proceedings in the Ontario Court (General Division).

On or about February 13, 1998, the Superintendent of Pensions advised the parties in part:

After careful review and consideration of the submissions made, I am unable to conclude that the proposed partial plan wind-up by the Plan administrator is not in compliance with the *Pension Benefits Act*, R.S.O. 1990 and the Regulations thereunder. Therefore, there are no grounds to issue the Orders requested under section 87(1) and (2) of the Act.

## **ADDITIONAL BACKGROUND**

The Plan was set up in 1967 by the International Typographical Union (ITU) as a multi-employer pension plan (MEPP) for Canadian members of the



ITU. The ITU subsequently merged with the Communications Workers of America (CWA).

The Plan is administered by a Board of Trustees including union and management representatives. The Plan is governed by a Trust Agreement.

Employers contribute to the Plan on the basis of rates negotiated as part of collective agreements. Based on actuarial calculations, a benefit formula is developed, converting contribution rates to a defined or “target” benefit, sometimes called “the pension promise”. To the extent that positive experience in investment returns or other elements create a funding excess or surplus, the Trustees can improve the benefit formula. If there are negative results, Trustees may have to reduce the benefit formula or even reduce accrued benefits. Employer obligations are limited to the contribution rates specified in collective agreements.

In March, 1994, shortly after several Locals (with a majority of active members in the Plan) moved from the CWA to the CEP, the Board of Trustees voted to remove three trustees who were members of Locals which had joined the CEP.

Through 1994 and 1995, the CEP began a process to have its Locals negotiate a cessation of contributions to the CWA/ITU plan, in order to promote a partial termination of the Plan and in contemplation of a transfer of assets and members to a new CEP MEPP. This process was stopped when it was realized that a partial termination would not transfer the entire CEP-related group, including retirees from Locals which had joined the CEP, to the new Plan.

## **THE RELEVANT LEGISLATION**

The following subsections of the Act and Regulations are of particular relevance to the proceedings:

Administrator

8.—(1) A pension plan is not eligible for registration unless it is administered by an administrator who is,

...

- (e) if the pension plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan of whom at least one-half are representatives of members of the multi-employer pension plan, and a majority of such representatives of the members shall be Canadian citizens or landed immigrants; ...

19. (1) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with this Act and the regulations.

22.(1) The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.

22.(2) The administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of the administrator's profession, business or calling, ought to possess.

22.(3) Subsection (2) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

22.(4) An administrator or, if the administrator is a pension committee or a board of trustees, a





member of the committee or board that is the administrator of a pension plan shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the pension fund.

70.(5) The Superintendent may refuse to approve a wind-up report that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members and former members of the pension plan.

87.(1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 89 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund.

87.(2) The Superintendent may make an order under this section if the Superintendent is of the opinion, upon reasonable and probable grounds,

- (a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;
- (b) that the pension plan does not comply with this Act and the regulations; or
- (c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.

89.(2) (e) Where the Superintendent proposes to make an order under section 87, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and on any other person to whom the Superintendent proposes to direct the order.

## THE ISSUES

### Issue 1

Did the Superintendent of Pensions in the decision of February 13, 1998 err in concluding that the proposed partial Plan wind-up by the Plan Administrator was in compliance with the Pension Benefits Act, R.S.O. 1990 and the Regulations thereunder?

### Issue 2

Did the Superintendent of Pensions, in the decision of February 13, 1998, err in finding that the Plan was being administered by the Board of Trustees in accordance with the Act the Regulations and the Plan?

One further issue was submitted for consideration subject to the respondents' argument that the tribunal did not have jurisdiction to consider the issue.

### Issue 3

Did the Superintendent of Pensions, in its decision of February 13, 1998, err in finding that the Plan Administrator did not fail to comply with its Statutory and common law fiduciary duty, by failing to properly consider the alternative of the division of the Plan before implementing its proposed partial wind-up?

## JURISDICTIONAL ISSUE

The respondents asserted that the Commission had no jurisdiction to consider common law fiduciary duties. The Panel heard argument on the respondents' motion to strike the third issue from the hearing. The Panel ruled that it would hear all the evidence, including the evidence on Issue 3 and rule on jurisdiction thereafter. The panel ordered and received particulars of the allegations in Issue 3.

The particulars provided by the applicant were as follows:

1. The Respondent Board of Trustees is the administrator of the pension plan.
2. The Plan does not expressly prescribe a process that requires consideration of alternatives to a plan wind-



up. The requirement to consider the alternative to a partial wind-up of an equitable division of the assets and liabilities of the Plan as proposed by the CEP representing a majority of the Plan's active and retired members is a necessary implication of the Trustees' acceptance of their Trusteeship and their agreement to act in that capacity in Agreement and Declaration of Trust; and their general powers, duties and obligation under the Plan of Benefits.

3. No steps were taken by the Board of Trustees to complete the prescribed process to consider alternatives to a wind-up to the Applicant's knowledge prior to the hearing.
4. The trustees failed to consider or used extraneous or irrelevant considerations or permitted union affiliations to conflict with the exercise of their duties; breached obligations to exercise their discretion, failed to exercise the level of prudence expected and failed to hold the balance evenly with strict candor between beneficiaries or acted in a manner prejudicial to the interests of a class of beneficiary and failed to act in the best interests of plan members.

The applicant sought, *inter alia*, an order that the trustees equitably divide the Plan's assets and liabilities.

The Applicant submitted that the Commission is granted broad authority to administer the Act and the regulations entitling it to give effect to the legislative intent and policy considerations underlying the Act. The applicant argued that the principles articulated in case law gave the Commission the power to impose on administrators and enforce common law fiduciary duties. In any event, the Applicant argued, the Commission has jurisdiction to apply equitable principles of trust law to assist it in determining the scope of administrator's statutory fiduciary obligations pursuant to section 22 of the Act.

Further it was argued that the Commission has a duty to address the obligations which form an inherent part of the Plan whether these arise by way of contract or trust

principles. Fiduciary duties are imposed on the administrator pursuant to section 22 of the Act, the Plan's trust document and the very nature of the trust relationship.

In respect of Issue 3, the respondents submitted that the powers of the Commission were defined by the provisions of its enabling legislation and the Commission was not entitled to go outside the scope and ambit of the Act, the regulations and the plan documents. It was submitted that the role of the Commission is to ensure that the Act and Regulations are properly administered. The role of the Commission is that of a watch dog. A function of the Commission is to hear appeals from decisions of the Superintendent and to act as a fiduciary in order to guard the rights of plan beneficiaries arising from the Act, the regulations and the Plan itself.

In this Panel's view, the provisions of sections 19 and 22 of the Act impose statutory obligations that are enforceable by the Commission independent of causes of action in tort, fiduciary or trust law. The role of the Commission is to apply those sections as the evidence and the facts demand but not to usurp the role of the Courts under other statutes and the common law. Proof of breach of tort, fiduciary or trust law is proof of breach of sections 19 and 22 of the Act but not, in our view, a separate enquiry giving rise to claims outside the scope of the statute. It is not for the panel to speculate on circumstances where the Commission may find that a plan administrator complied with the provisions of the Act, in the face of evidence establishing breach of the administrator's common law fiduciary duties to the Plan and its members. In any event, the evidence in this matter falls short of establishing breach of the Act.

## **ISSUES 1 & 2**

The Applicant, CEP, asks that the Commission deny the application for a partial wind-up on the grounds that the Trustees failed to fully consider a division of assets and accordingly there was a failure to exercise



the care and diligence required of a trustee under the Act and the common law.

As a remedy, the Applicant asks the Commission to order the parties to resolve the issue between them, using Alternative Dispute Resolution, if necessary, and to report back to the panel.

The application is denied. Such a remedy is outside the jurisdiction of the Panel to order.

### Reasons

Pension plan trustees have broad fiduciary obligations in administering pension plans, and the Pension Commission of Ontario shares the obligation to ensure that all plan members and beneficiaries are treated fairly and without bias.

The Applicant argued that the Trustees breached their common-law fiduciary obligations by not fully considering Mr. Pomeroy's proposal for a division of assets that would have transferred retirees from locals which had joined the CEP as well as CEP actives to a new CEP MEPP.

Evidence was presented that indicated that the Trustees considered the division of plan assets as proposed by Mr. Pomeroy, took professional advice and rejected the proposal. The Applicant argues that consideration is not enough, but rather that there was a failure to agree with Mr. Pomeroy's proposal. Since Mr. Pomeroy is the head of the union which now represents the majority of active Plan members it was argued that the trustees had a duty to acknowledge the rights of his constituency by following his proposal.

There was an admitted failure to make timely disclosure to Mr. Pomeroy of all the professional advice on which the Trustees' decision was made. While this was unfortunate, and certainly is not condoned by the panel, it is unlikely to have had any substantive effect on the decision of the Board of Trustees, or on the position of Mr. Pomeroy or passage of the resolution to wind-up the plan. Subsequent to the disclosure of this advice, the basic disagreements on funding methods

and the future of retirees in the plan remained.

For the Superintendent or the Pension Commission of Ontario to intervene in the administration of a registered pension plan, there must be evidence of a failure by trustees to administer the Plan in accordance with the Act the Regulation or the plan documents, or a breach of the trustees' duties. Other statutes, such as the *Trustee Act of Ontario*, grant specific rights, obligations and remedies in respect of the administration of a trust.

The Applicant argued that the Plan's Trust Agreement did not give the Trustees authority to stop accepting contributions from Contributing Employers. The panel disagrees. In the panels' view, this power is implicit to enable the Trustees to perform the duties assigned to them.

The Applicant argued that the majority of Trustees failed to fulfill the requirements of Sections 22(1) and 22(2) because they were biased and guilty of acting in bad faith.

The Applicant did not, however, present concrete evidence of any way in which the Trustees failed to treat all plan members fairly. Surplus has been used, from time to time, to provide increased benefits to both retirees and active members. There was no evidence of differential treatment between plan members who remained in the CWA and those who joined the CEP.

The refusal to convert from Entry Age Normal to Unit Credit funding was based on professional advice and the Trustees' judgement concerning the demographics of plan membership. Both Unit Credit and Entry Age Normal are generally accepted funding methods recognized by the Canadian Institute of Actuaries and the other relevant authorities.

The Entry Age Normal funding method is a level funding method whereas the Unit Credit funding method can result in increasing costs. Unit Credit provides for funding based on the average age of each plan member. Unless the average age of the group



remains constant or decreases, funding costs will increase over time. Entry Age Normal funding seeks to provide more level funding over time by averaging funding costs over the full period from entry age to assumed retirement. In the absence of future favourable circumstances (e.g. higher-than-forecast rates of investment return, an influx of younger members) creating substantial actuarial gains, the Trustees would eventually be required to reduce the formula for future benefit accruals.

On the evidence, the Trustees' decision to continue to use the Entry Age Normal funding method in order not to increase the risk of having to reduce the benefit formula in the future is not unreasonable.

The decision to seek a partial wind-up rather than a division which would also transfer out of the Plan retirees from Locals now represented by the CEP can be justified by an understandable desire to maintain the financial viability of the ongoing CWA plan. The Trustees were, it seems, concerned about satisfying the "pension promise".

The Applicant argued that a new CEP MEPP and its members would be disadvantaged by a partial wind-up, since transferring members would be likely to exercise their option, as required by the Act, to transfer the value of their accrued benefits to a locked-in RRSP. It is not the responsibility of the Trustees of the CWA plan to ensure the viability of another pension plan. There is no evidence that members and retirees will be disadvantaged by a partial plan wind-up.

It was argued that the desire of the CWA Trustees to terminate the participation of CEP members in the plan was evidence of conflict of interest, since it was in their interest to end the problems resulting from inter-union rivalries. This contention is difficult to accept, given that it was the clear intention, supported by active measures, of the CEP, and its representative on the Board of Trustees, to withdraw the CEP-represented group from the Plan. In any case, the evidence does not support a finding that a partial

termination, following the terms of the legislation and providing to all members their full share of accrued surplus harms any plan members.

Clearly there has been a strong feeling among some retirees that they have been unfairly treated in the Plan, and that benefit improvements to retirees have been insufficient. This was the brunt of the evidence of Mr. Buller, a retiree who was granted standing before the panel.

There was no evidence presented that indicated that retirees had been relatively disadvantaged by the actions of the Trustees. The Plan provides some credit for service prior to contributory service, and benefit improvements, arising from the use of surpluses, have consistently been provided to both actives and retirees.

Counsel for the Applicant asserted that it was necessary to import "labour relations realities" into the pension context - specifically to require Trustees to represent the majority interests of plan members at the Board in the same way a bargaining agent is required by labour relations statutes to represent its members. Without specifically commenting on the cases supporting this argument, we find the Trustees' overriding duties were to the Plan and the Trust and there was no evidence to support a finding of breach of these duties.

Accordingly, the application is dismissed.

Dated this 7th day of June, 1999 at the City of Toronto, Province of Ontario.

Mr. David E. Wires, Chair

Mr. Louis Erlichman, Member

Mr. William M. Forbes, Member





## Financial Services Tribunal Decision with Reasons

(Note: Only those FST decisions pertaining to pensions are included in this section.)

**INDEX NO.:** FST Decision #3 (FST File No. P0013)

**PLAN:** Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230

**DATE OF DECISION:** June 21, 1999

**PUBLISHED:** FSCO Pension Bulletin 8/2 and FSCO website

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### FINANCIAL SERVICES TRIBUNAL

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended by the *Financial  
Services Commission of Ontario Act*, 1997, S.O. 1997,  
c. 28 (the “Act”);

**AND IN THE MATTER OF** a Partial Plan Wind  
Up Report submitted by Monsanto Canada Inc. to the  
Superintendent of Financial Services respecting the  
Pension Plan for Employees of Monsanto Canada Inc.,  
Registration Number 341230 (the “Plan”);

**AND IN THE MATTER OF** a Hearing in  
accordance with subsection 89(8) of the Act;

### BETWEEN:

MONSANTO CANADA INC.

Applicant

- and -

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

### BEFORE:

Mr. Colin H.H. McNair, Vice Chair  
of the Tribunal and Chair of the Panel  
Mr. Louis Erlichman, Member of  
the Tribunal  
Mr. C.S. (Kit) Moore, Member of  
the Tribunal

### APPEARANCES:

For the Applicant:  
Ms. Freya Kristjanson  
Mr. Markus F. Kremer

For the Superintendent:  
Ms. Deborah McPhail

**HEARING DATE:** June 2, 1999  
Toronto, Ontario

### REASONS FOR ORDERS

#### The Background

On June 2, 1999 the Tribunal held an oral hearing on a preliminary motion in this matter, made by the Applicant, Monsanto Canada Inc. (“Monsanto”), for orders directing the Respondent, the Superintendent of Financial Services (the “Superintendent”), to disclose certain documents and to respond to certain interrogatories. At the conclusion of the hearing, after receiving submissions from both parties, the Tribunal made the orders set out in Appendix A and Appendix B (the “Orders”) and undertook to provide written reasons for those Orders thereafter.

The matter to which the Orders relate is a request for a hearing, filed by Monsanto on December 31, 1998, pursuant to subsection 89(8) of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997 (the “Act”). That request concerns a Notice of Intent (the “Notice”) to Refuse to Approve a Partial Wind Up Report (the “Report”), which Notice was served by the Superintendent on Monsanto on November 30, 1998. The Report was submitted by Monsanto to the Superintendent on



August 11, 1997; it relates to the partial wind-up of the Pension Plan for Employees of Monsanto Registration Number 341230 (the “Plan”) as it affects certain employees who received notice of termination as a result of two separate corporate reorganizations (the “Affected Employees”). The Report proposes that the partial wind-up be effective May 31, 1997 (the “Partial Wind Up Date”).

The Notice recites a number of reasons for the Superintendent’s decision to serve it. In essence, it states that the Report does not meet the requirements of the Act and the regulations under it and does not protect the interests of members and former members of the Plan because:

- It does not treat the benefit enhancements provided for certain of the Affected Members, by amendment to the Plan, as distributions from the surplus of the Plan subject, as such, to requirements of equitable allocation among members of the Plan and to the prior consent of the Superintendent and of a certain percentage of the members of the Plan, and
- It does not contemplate the distribution of the assets of the Plan, including surplus, as at the Partial Wind Up Date, that relate to the Affected Members and it allows Affected Members to leave their pensions and deferred pensions in the Plan.

### The Basis for the Motion

One of the issues in this matter that Monsanto identified, in its pre-hearing conference brief, is whether it can rely, to its benefit, on the doctrine of “legitimate expectation”, which has received acceptance in Canadian administrative law (see *Old St. Boniface Residents Association v. Winnipeg (City)* (1990), 75 D.L.R. (4th) 385, at p. 414 (Supreme Court of Canada)). Counsel for Monsanto maintained, on the motion, that this doctrine would apply in the present case if it could be established that Monsanto had a legitimate expectation that the Superintendent would follow the past practice of the office of the

Superintendent, as to the treatment of benefit enhancements and the need (if any) for surplus distribution, on the partial wind-up of a pension plan. Counsel alleged that the Superintendent had a duty, by virtue of the doctrine, to act fairly in changing any such practice, to the detriment of Monsanto and others similarly situated and, therefore, was required to engage in prior consultation with, or prior communication to, Monsanto and other affected persons. The disclosure orders against the Superintendent were requested in an effort to obtain information regarding any such past practice and the circumstances regarding any change thereto.

In its pre-hearing conference brief, Monsanto identified, as a further issue, whether the Superintendent is estopped, by any practice of the kind described above, from refusing to approve the Report. Counsel for Monsanto maintained, on the motion, that there was another relevant issue, namely whether the failure to consider past practice and the significance of any change thereto would constitute an improper fettering of a discretionary authority under the Act to approve partial wind-up reports. These other issues were offered as further justification for ordering the Superintendent to provide the requested information about past practice.

### The Authority of the Tribunal to Entertain the Motion

The Interim Rules of Practice and Procedure of the Tribunal address the requirements of pre-hearing disclosure, by a party to a proceeding before the Tribunal, of information relating to the subject matter of the proceeding, including documentary information and information requested by way of response to specific interrogatories (i.e. written questions) posed by another party. Rule 31.01(d) imposes an obligation on all parties to “provide such \_ information, particulars or documents as the Tribunal considers necessary to enable it to obtain a full and satisfactory understanding of an issue in the proceeding.”



Rule 19.01 provides that the Tribunal, may issue procedural directions providing for interrogatories that are necessary to;

- (a) clarify evidence filed by a party;
- (b) simplify the issues;
- (c) permit the full and satisfactory understanding of the matters to be considered; or
- (d) expedite the proceeding.

Monsanto initially put its interrogatories, relating to the practice of the Superintendent in dealing with partial wind-up reports, to the Superintendent through its pre-hearing conference brief. The Superintendent indicated, in her pre-hearing conference brief, that she was unwilling or unable to provide the information called for by those interrogatories. Monsanto was dissatisfied with that response and, as entitled under Rule 20.03, filed a notice of motion to have the matter determined by the Tribunal.

It follows from Rule 20.03, and from the Tribunal's authority under Rule 13.01 to make procedural orders, that the Tribunal may entertain Monsanto's motion for the disclosure orders it requested against the Superintendent. Section 5.4 of the *Statutory Powers Procedure Act* provides that a tribunal, such as the Tribunal, that has made rules governing its practice and procedure, may at any stage of a proceeding before it, subject to any other Act or regulation that applies to the proceeding, make orders for;

- the exchange of documents,
- the oral or written examination of a party,
- the exchange of witness statements and reports of expert witnesses,
- the production of particulars,
- any other form of disclosure,

except that this authority does not authorize the making of an order requiring disclosure of privileged information.

## A Test for Pre-Hearing Disclosure

We believe that the Tribunal should, generally, be prepared to make a disclosure order against a party to a proceeding before it, requiring the production of documents or answers to interrogatories, in the following circumstances (if not also in other circumstances);

- the information sought is arguably relevant to an issue in the proceeding and that issue is not a frivolous one,
- the information sought is sufficiently particularized that the party from whom the information is requested should be able to respond efficiently and with a reasonable degree of precision, and
- the information is not privileged.

This test for ordering disclosure is consistent with Rules 13.01 and 20.03 of the Tribunal and section 5.4 of the *Statutory Powers Procedure Act*.

## Analysis

Counsel for the Superintendent maintained that the doctrine of "legitimate expectation" was irrelevant in this case because the proceeding before the Tribunal was by way of a hearing de novo with the result that the Tribunal was not inhibited or otherwise affected by the prior practice of the Superintendent in similar matters. We do not think that the function of the Tribunal can be divorced, to this extent, from the function of the Superintendent. The hearing before the Tribunal that the Act affords in this case is simply part of the over-all process of regulatory review of pension plan wind-up reports (see ss. 70 and 89(4), (6) – (9) of the Act). Subsection 89(9) of the Act, which suggests that the Tribunal is to carry out a hearing de novo in performing its role in that process, allows the Tribunal, in effect, to step into the shoes of the Superintendent. Therefore, the Tribunal can properly take account of any factors pertaining to the matter that the Superintendent should have considered. One of those factors might well be whether the doctrine of "legitimate expectation" applies in the circumstances and to what effect.



Counsel for the Superintendent also maintained that the doctrine of “legitimate expectation” cannot possibly apply in this case as it does not operate where there would be a resulting interference with the requirements of law. In essence, the argument was that the position taken by the Superintendent in the Notice was dictated by the Act and, whatever the past practice may have been, the Superintendent had no latitude to do anything but to apply the requirements of the Act. In our view, it is at least arguable that the Superintendent had some discretion in the matter of whether to approve the Report given subsection 70(5) of the Act, which provides that:

The Superintendent may refuse to approve a wind-up report that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members and former members of the pension plan [emphasis added].

Subsection 70(6) may have the effect of narrowing any such discretion in that it suggests that the Superintendent would be obliged to refuse to approve a partial wind-up report if the members and former members of the pension plan were given rights and benefits that fell short of those they would have on a full wind-up of the plan. The precise effect of subsection 70(5), particularly as read with subsection 70(6), will no doubt be the subject of further submissions at the hearing on the merits of this case. At this stage of the proceeding, it would be inappropriate to make a definitive determination as to whether the Superintendent had any discretion on the question of whether to approve the Report.

Finally, counsel for the Superintendent maintained that the doctrine of “legitimate expectation” may only be raised on a judicial review application or a statutory appeal and, therefore, it has no place in this proceeding before the Tribunal. We agree with counsel for Monsanto that the particular duty of fairness that is mandated by this doctrine is not an element of judicial review or statutory appeal but that

those processes have simply provided the means for enforcing that duty. There is no reason, in principle, why the duty should not be recognized in the context of a proceeding before an administrative body such as this Tribunal.

For the purposes of Monsanto’s motion for orders of disclosure against the Superintendent, we are not required to make, and we do not make, any decision as to whether the doctrine of “legitimate expectation” does, in fact, apply in this matter, whether it would entitle Monsanto to any relief and what any such relief might be. We have only to decide, at this stage, whether Monsanto’s argument that the doctrine applies is a frivolous argument.

### Conclusion

We are persuaded that the information sought by Monsanto, as to any practice of the Superintendent in matters of this kind, is arguably relevant to the issue that Monsanto has raised of whether the doctrine of “legitimate expectation” applies in this case and that this is not a frivolous issue in the present context. The information has been sufficiently particularized by Monsanto and no claim has been made that disclosure would involve a violation of privilege. Therefore, applying the test for pre-hearing disclosure that we have adopted, we made the Orders set out in Appendices A and B. The Orders are in the form requested by Monsanto except that the time for compliance by the Superintendent is four, rather than three, weeks from the date of the Orders.

Dated the 21st day of June, 1999 at the City of Toronto, Province of Ontario.

Colin H. H. McNairn, Chair

C. S. (Kit) Moore, Member

Louis Erlichman, Member





## Appendix A

The Superintendent of Financial Services (the "Superintendent") is hereby ordered to disclose the documents described below to Monsanto Canada Inc. within four weeks of the date of this order:

All records, documents and other materials in the possession of the Superintendent or the Financial Services Commission of Ontario in relation to the following:

1. Any memoranda, analysis, notes or reports identifying a change in position or administrative practice in the period November 1992 to November 1998 regarding matters raised in the Notice of Proposal to Refuse to Approve served by the Superintendent on Monsanto Canada Inc. on November 30, 1998 and the reasons for such change.
2. Any memoranda, analysis, notes, reports or other materials relating to matters raised in the interrogatories attached as Appendix B.

Dated this 2nd day of June, 1999.

## Appendix B

The Superintendent of Financial Services (the "Superintendent") is hereby ordered to answer the interrogatories of Monsanto Canada Inc. set out below within four weeks of the date of this order:

1. Have partial wind-up reports been filed in which the plan which is the subject of the partial wind-up has been in actuarial surplus as at the date of the partial wind-up report, during the period November 1992 to November, 1998? If so, how many?
2. How many of those reports were approved, or not refused by the Superintendent, where there was no immediate distribution of surplus, or where the report indicated that any surplus distribution relating to the partial wind-up group could be dealt with at the time of full wind-up?

3. Has the Superintendent accepted partial wind-up reports in the period November 1992 to November, 1998 for plans with actuarial surplus as at the partial wind-up date, in which the report stated that if and when the plan is fully wound up, that any surplus attributable to the partial wind-up group at the time the plan is fully wound up will be dealt with at the time of full wind-up in accordance with the terms of the plan and applicable legislation? Has the Superintendent in this period granted his or her consent pursuant to section 70(3) of the Act even where no present distribution of such actuarial surplus was provided for? If so, on how many occasions?
4. See letter received from the Pension Commission, and attached hereto as Schedule 1. Is this the form of letter that, in the past, has been sent by the Superintendent in situations relating to item #3, above? How many letters in this form have been sent by the Commission in the period November, 1992 to November, 1998?
5. At any time prior to August, 1997, did the Superintendent indicate that he or she would be changing this practice regarding the treatment of surplus on partial wind-up and, if so how was this communicated?
6. Has the Superintendent approved the provision of benefit enhancements coincident with partial wind-up reports in the period November, 1992 to November, 1998? If so, how many? Were the benefit enhancements treated as a distribution of surplus in each case? If not, how many and in what proportion of cases were they treated as a distribution of surplus or indirect payment of surplus to the employer, and what were the reasons for such treatment? Where such benefit enhancements were not treated as a distribution of surplus or indirect payment of surplus to the employer, why were they not so treated?



7. Has the Superintendent required all partial wind-up reports filed in the period November 1992 to November 1998 to provide for the distribution of all plan assets relating to the partial wind-up to provide for the purchase of annuities such that members and former members were precluded, notwithstanding the deemed or actual election, from leaving their pensions or deferred pensions in the plan? If not, how many partial wind-up reports have been approved by the Superintendent during such period which permitted the plan administrator to either choose to leave benefits in the plan as is the administrator's right under ss. 43 and 72(2) of the Act, or permitted the member/former member to elect to leave benefits in the plan pursuant to the plan terms?

Dated this 2nd day of June, 1999.

## SCHEDULE 1

Dear

Re:

Based on the documents in our files and our review of the partial wind-up report and other documents submitted by you as required under the *Pension Benefits Act*, R.S.O. 1990 (the "Act") and Regulation 909, R.R.O. 1990, as amended, the proposals set out in the partial wind-up report for the distribution of pension benefit entitlements are acceptable for purposes of the Act. Pursuant to my authority under subsection 70(3) of the Act, I hereby authorize the distribution of the assets of the pension plan to the members, former members and other persons affected by the partial wind-up effective September 30, 1993 in accordance with that report.

Please note that pursuant to subsection 70(6) of the Act, the members, former members and other persons affected by the partial wind-up "shall have rights and benefits that are not less than the rights and benefits they would have on a full wind-up of the pension plan on the effective date of the partial wind-up." The

rights and benefits referred to in this subsection may include any entitlements to surplus that would exist on a full wind-up. As a result, the surplus attributable to the members, former members and other persons affected by the partial wind-up must be dealt with in accordance with the Act.

In the event you have any questions, please contact David Allan, Pension Officer, of this office at (416) 314-0612.

Yours very truly,

D. Ross Peebles  
Superintendent of Pensions



PLACE  
STAMP  
HERE

The Editor, *Pension Bulletin*  
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